

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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| In re: |) | Chapter 11 |
| |) | |
| MIDDLEBROOK PHARMACEUTICALS, INC., ¹ |) | Case No. 10-11485 (MFW) |
| |) | |
| |) | |
| Debtor. |) | |

DISCLOSURE STATEMENT FOR THE DEBTOR'S PLAN OF LIQUIDATION

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Dated: November 4, 2010

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I. INTRODUCTION

MiddleBrook Pharmaceuticals, Inc. (the “**Debtor**,” or, alternatively, the “**Proponent**”), hereby submits this disclosure statement (the “**Disclosure Statement**”) pursuant to Section 1125, Title 11, United States Code (the “**Bankruptcy Code**”) in connection with the solicitation of acceptances for its Plan of Liquidation (the “**Plan**”), a copy of which is attached hereto as Exhibit A. The purpose of this Disclosure Statement, in accordance with the requirements of Section 1125 of the Bankruptcy Code, is to provide “adequate information” concerning the Plan, of a kind and in sufficient detail to enable a hypothetical reasonable investor, typical of holders of the Classes¹ of Claims being solicited, to make an informed judgment whether to accept or reject the Plan. This Disclosure Statement should be read in conjunction with the Plan and the other exhibits to this Disclosure Statement.

IT IS IMPORTANT TO NOTE AT THE OUTSET THAT THE RESULTS OF THE CONFIRMATION AND IMPLEMENTATION OF THIS PLAN WILL REPRESENT PAYMENT IN FULL TO ALL CREDITORS, PLUS INTEREST, AND A SUBSTANTIAL DISTRIBUTION TO EQUITY. ACCORDINGLY, THIS PLAN REPRESENTS THE CULMINATION OF AN EXTREMELY SUCCESSFUL BANKRUPTCY PROCESS.

A. Case Background.

On April 30, 2010, the Debtor filed its bankruptcy case under Chapter 11 of the Bankruptcy Code (the “**Bankruptcy Case**”). As discussed in more detail below, the Bankruptcy Case was commenced in order to effectuate a restructuring or liquidation of the Debtor’s business and debts. Accordingly, since that time, the Debtor has sold substantially all of its assets and has begun winding down its operations. The Plan attached hereto represents the Debtor’s best judgment as to how to allocate the value of the Debtor’s estate. The Debtor has actively sought input from the Creditors’ Committee and the Equity Committee to formulate the Plan, and hopes that the two Committees will support the Plan.

B. Summary Of Classes Under The Plan And Their Treatment.

Set forth below is a summary description of the treatment of all Claims and Interests provided for in the Plan. The summary is qualified in its entirety by reference to the more detailed information elsewhere in this Disclosure Statement, to the Plan and to the exhibits to this Disclosure Statement and the Plan. This summary does not purport to be complete and should not be relied upon for voting purposes. A more complete description of the Plan is provided in *Section III, The Plan of Reorganization*, below. Finally, the estimate of the amount of Claims in each category or Class listed below represents the Debtor’s best reasonable estimate, based on information received to date, and based on what the Debtor believes are reasonable and correct grounds for which to object to certain Claims that have been filed. If the amount of Claims is greater than the estimates set forth below, then creditors may receive a lower recovery than what is estimated by the Debtor. By the same token, the Debtor is still in the process of completing

¹ Unless otherwise defined herein, capitalized terms used but not defined herein shall have the respective meanings set forth below in the Plan.

their Claims reconciliation, and certain of the Claim amounts set forth below may be further reduced, after the Debtors have completed this task.

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| <p><i>Administrative Expenses</i></p> <p>Estimated Amount of Allowed Expenses: \$3,500 (this number does not include expenses incurred and paid in the ordinary course of business, nor does it include accrued but unpaid professional fees)</p> | <p>Unimpaired. Unless otherwise agreed by the Holder of an Administrative Expense, in full satisfaction, settlement, release, and discharge of and in exchange for each Administrative Expense, each Holder of an Allowed Administrative Expense will receive payment in full and in Cash of any unpaid portion of such Allowed Administrative Expense as follows:</p> <p>(i) in the case of professional advisors, subject to the provisions of Sections 328, 330, 331 and 503(b) of the Bankruptcy Code, the Interim Compensation Order and Article XI of the Plan, as soon as practicable after final Bankruptcy Court approval thereof; and</p> <p>(ii) with respect to each other Allowed Administrative Expense, on the later of (x) the date on which such claims become due in the ordinary course of business and in accordance with the terms and conditions of the particular agreements governing such obligations, and (y) on or as shortly after the Effective Date as is practicable; or (z) such other date as may be agreed upon between the Holder of such Administrative Expense and the Debtor or the Plan Administrator, or as provided for in a Final Order.</p> <p>Estimated Recovery: Payment in full, in cash, of the Allowed amount of each Administrative Claim.</p> |
| <p><i>Priority Tax Claims</i></p> <p>Estimated Amount of Claims: \$3,000</p> | <p>Unimpaired. Unless otherwise agreed by the Holder of a Priority Tax Claim, in full satisfaction, settlement, release, and discharge of and in exchange for each Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive in full satisfaction, settlement and release of and in exchange for such Priority Tax Claim, at the election of the Plan Administrator: (x) Cash equal to the amount of such Priority Tax Claim on or as shortly after the Effective Date as is practicable; (y) such other treatment as to which the Debtor or the Plan Administrator and the Holder of such Priority Tax Claim shall have agreed upon in writing; or (z) such other treatment as will cause such Claims not to be Impaired, including, but not limited to, payment as set forth in Section</p> |

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| | <p>1129(a)(9)(C) of the Bankruptcy Code; provided, however, that any Priority Tax Claim not due and owing on the Effective Date will be paid when such Claim becomes due and owing.</p> <p>Estimated Recovery: Payment in full, in cash or in deferred cash payments, of the Allowed amount of each Priority Tax Claim.</p> |
| <p><i>Class 1 – Priority Non-Tax Claims</i></p> <p>Estimated Allowed Amount of Claims: \$147,000</p> | <p>Unimpaired. In full satisfaction, settlement, release, and discharge of and in exchange for each Priority Non-Tax Claim, in the ordinary course of business as such claims become due, or, if due now, on or as shortly after the Effective Date as is practicable, each Holder of an Allowed Priority Non-Tax Claim as of the Distribution Record Date shall receive in full satisfaction, settlement and release of and in exchange for such Priority Non-Tax Claim, at the election of the Debtor or the Plan Administrator: (i) Cash equal to the amount of such Priority Non-Tax Claim; (ii) such other treatment as to which the Debtor or the Plan Administrator and the Holder of such Priority Non-Tax Claim shall have agreed upon in writing; or (iii) such other treatment as will cause such Claims not to be Impaired; provided, however, that any Priority Non-Tax Claim not due and owing on the Effective Date will be paid when such Claim becomes due and owing.</p> <p>Estimated Recovery: Payment in full, in cash, of the Allowed amount of each Priority Non-Tax Claim.</p> |
| <p><i>Class 2 – Secured Claims</i></p> <p>Estimated Allowed Amount of Claims: \$134,000</p> | <p>Unimpaired. In full satisfaction, settlement, release, and discharge of and in exchange for each Secured Claim, if any, each Holder of an Allowed Secured Claim as of the Distribution Record Date, if any, shall, at the election of the Debtor or the Plan Administrator, have its Claim Reinstated or satisfied in Cash, in full, on the Effective Date.</p> <p>Estimated Recovery: Payment in full, in cash, or Reinstatement, of the Allowed amount of each Secured Claim</p> |

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| <p><i>Class 3 – General Unsecured Claims</i></p> <p>Estimated Allowed Amount of Claims: \$4,715,000</p> | <p>Unimpaired. In full satisfaction, settlement, release, and discharge of and in exchange for each General Unsecured Claim, each Holder of an Allowed General Unsecured Claim as of the Distribution Record Date shall receive one hundred percent (100%) of such Allowed General Unsecured Claim, plus such interest as may be legally allowable on such Claim at the non-default contractual rate, or, if no contractual rate is stated, then at the federal judgment rate then prevailing, accruing from the Petition Date to the Effective Date, in Cash (to the extent unpaid prior to the Effective Date). Notwithstanding any provision in the Plan to the contrary, to the extent and only to the extent a General Unsecured Claim is subordinated under applicable law, including but not limited to, Sections 510(a), (b) or (c) of the Bankruptcy Code or recharacterized under applicable law, including but not limited to, Section 105 of the Bankruptcy Code, any distributions on account of such General Unsecured Claim shall be made as provided in the Bankruptcy Court order regarding such Claim.</p> <p>Estimated Recovery: Payment in full, in cash, of the Allowed amount of each General Unsecured Claim.</p> |
| <p><i>Class 4 – Interests</i></p> <p>Estimated Allowed Amount: 86.5 million shares</p> | <p>Either Unimpaired, and therefore deemed to accept the Plan, or Impaired and shall be deemed to reject the Plan. Upon any Distribution or Subsequent Distribution Date and subject to and upon the payment in full (or the establishment of appropriate reserves for payment in full) of all Allowed Claims then existing, plus such interest provided for in the Plan, and after making appropriate reserves for Disputed Claims as set forth in Article VI of the Plan, as well as for ongoing expenses of administration of the Estate, in full satisfaction, settlement, release, and discharge of and in exchange for each Interest, each Holder of an Allowed Interest as of the Distribution Record Date shall receive a Pro Rata share of the remaining Cash in the Estate, if any.</p> <p>Estimated Recovery: Payment of \$6 to \$9 million, in the aggregate. However, please see <i>Section II.C.vi, The Par Claim</i>, below, regarding a discussion of how this Class may be impacted by certain Claims and objections thereto.</p> |

C. Impaired Claims Entitled To Vote.

The Debtor believes and asserts that no Class of Claims or Interests is Impaired, and thus no Class is entitled to vote on the Plan. However, to the extent that the Bankruptcy Court determines that Class 4 is Impaired, such Class shall be deemed to reject the Plan.

D. Claims And Interests Not Entitled To Vote.

Holders of Allowed Claims in the unclassified Classes (Administrative Claims and Priority Tax Claims), and Holders of Allowed Claims in Class 1 (Priority Non-Tax Claims), Class 2 (Secured Claims), and Class 3 (General Unsecured Claims) are Unimpaired and therefore are presumed to have accepted the Plan, and are not entitled to vote. The Debtor believes and asserts that Holders of Interests in Class 4 are also Unimpaired and as such, they are presumed to have accepted the Plan and are not entitled to vote. However, to the extent that the Bankruptcy Court determines that Class 4 is Impaired, such Class shall be deemed to reject the Plan. Accordingly, Class 4 is not entitled to vote on the Plan.

E. The Debtor's Recommendation.

The Debtor believes that confirmation of the Plan is in the best interests of Creditors and Interest Holders and will maximize the return to all stakeholders and yield a distribution to Creditors and Interest Holders as soon as possible. Accordingly, you are urged to support the Plan. However, for a discussion of certain factors that should be considered in connection with a vote on the Plan, see *Section VI, Certain Risk Factors to be Considered*, below.

F. Plan Procedures And Deadlines.

The objection deadline to object to the Plan is 4:00 p.m., prevailing Eastern Time, on December 6, 2010, unless extended by the Debtors.

G. Reservations And Disclaimers, Available Information And Cautionary Statement Concerning Forward-Looking Statements.

The Plan has not been approved or disapproved by the U.S. Securities and Exchange Commission (the "Commission"), any state securities commission or the Bankruptcy Court, nor has the Commission, any state securities commission or the Bankruptcy Court passed upon the fairness or merits of these transactions. Any representation to the contrary is a criminal offense.

In addition, the Debtor has filed various pleadings and other papers with the Bankruptcy Court since the commencement of these cases, which may contain information you would want to know. All such documents may be viewed at the office of the Clerk of the Bankruptcy Court, 5th Floor, 824 Market Street, Wilmington, Delaware 19809, or may be viewed by visiting the Bankruptcy Court's website, located at <http://www.deb.uscourts.gov/>, or at <http://www.kccllc.net/MiddleBrook>.

No person has been authorized to give any information or make any representation not contained in this Disclosure Statement and, if given or made, such information or representation

should not be relied upon. This Disclosure Statement does not constitute an offer to sell or the solicitation of an offer to buy any securities other than those to which it relates, or an offer to sell or a solicitation of an offer to buy any securities in any jurisdiction in which, or to any person to whom, it is unlawful to make such offer or solicitation. The delivery of this Disclosure Statement after the date hereof should not, under any circumstances, create an implication that there has been a change in the affairs of the Debtor or in the information contained herein since the date hereof.

Certain statements in this Disclosure Statement are forward-looking statements that involve known and unknown risks, uncertainties and other factors which may cause the actual results of the Debtor to be materially different from any future results expressed or implied by such forward-looking statements. Forward-looking statements include, among others, statements regarding the ability of the Debtor to successfully complete the liquidation outlined in this Disclosure Statement and achieve the projected or assumed results. Factors that may cause actual results of the Debtor to differ from future results expressed or implied by forward-looking statements include, among others, the following: the risks described in *Section VI, Certain Risk Factors to be Considered*, below, and the ability of the Debtor to obtain confirmation of the Plan. Some of these assumptions inevitably will not materialize, and unanticipated events may occur which could materially affect the Debtor's results. Given these uncertainties, holders of Claims entitled to vote on the Plan are cautioned not to place undue reliance on any forward-looking statements in determining whether to vote to accept or reject the Plan or to take other action under the Plan.

II. GENERAL INFORMATION ABOUT THE DEBTOR AND THIS CASE

A. The Debtor And Its Pre-Petition Operations.

The Debtor is a pharmaceutical company, incorporated in Delaware, which formerly focused on commercializing anti-infective drug products that fulfill unmet medical needs. As of the Petition Date, the Debtor was engaged in the manufacturing, marketing and sale of MOXATAG® and KEFLEX® in the United States, had developed a proprietary delivery technology called PULSYS® and had additional product candidates in clinical development that use the PULSYS® technology. On the Petition Date, the Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code. On May 11, 2010, the United States Trustee appointed the Creditors' Committee pursuant to Section 1102 of the Bankruptcy Code. Since the initial appointment, the United States Trustee has amended the appointment of the Creditors' Committee. On June 24, 2010, the United States Trustee also appointed the Equity Committee pursuant to Section 1102 of the Bankruptcy Code. The United States Trustee has also amended the appointment of the Equity Committee. On June 1, 2010, the Debtor filed its Schedules (Schedule F was amended on July 9, 2010 (Docket No. 189)). The Debtor entered bankruptcy on the Petition Date with no material secured debt. A further description of the Debtors' corporate history, its business and the events leading up to the filing of its Bankruptcy Case be found in the Declaration of David Becker in Support of Chapter 11 Petition and First Day Motions (Docket No. 4), which was filed on the Petition Date.

B. First Day Motions And Ordinary Course Payments.

On the Petition Date, the Debtor filed certain motions requesting authority to pay certain prepetition obligations, including: (i) tax obligations and government assessments (Docket No. 7); (ii) employee obligations (Docket No. 8); and (iii) critical vendor claims (Docket No. 10), and also filed motions requesting authority to (i) employ the KCC (Docket No. 5); (ii) prohibit utilities from discontinuing service (Docket No. 6); (iii) maintain prepetition bank accounts (Docket No. 9); (iv) establish procedures for trading in the Debtor's equity securities (Docket No. 11); and (v) reject certain executory contracts and unexpired leases of the Debtor (Docket No. 12) (collectively, the "**First Day Motions**"). With the exception of the motion to reject certain executory contracts and unexpired leases of the Debtor (Docket No. 12), which was granted on June 7, 2010, the Bankruptcy Court granted the relief sought in the First Day Motions on May 4, 2010. Pursuant to the Bankruptcy Code the Debtor has satisfied obligations arising after the Petition Date in the ordinary course of business.

C. Significant Post-Petition Events.

i. Retention of Professionals

Early in the Bankruptcy Case, pursuant to Sections 327 and 328 of the Bankruptcy Code and Bankruptcy Rule 2014 and orders of the Bankruptcy Court, the Debtor retained the following professionals in the case: (i) Alston & Bird LLP and Young Conaway Stargatt & Taylor LLP as bankruptcy counsel, (ii) Gleacher & Company Securities, Inc. ("**Gleacher**") as investment banker and financial advisor, and (iii) KCC as noticing and claims agent. With the exception of KCC, since the Petition Date these professionals have been paid 80% of their fees and 100% of their expenses on a monthly basis, pursuant to the professional fee procedures approved by the Bankruptcy Court. Pursuant to Bankruptcy Court order, KCC has been paid for its fees and expenses in full, as billed to the Debtors in the ordinary course of business.

ii. Implementation of Employee Retention Program

The Debtor has enjoyed relatively low turnover of management and employees during the pendency of this case. Despite numerous layoffs and increased responsibilities falling upon the shoulders of remaining management and employees, the existing labor force has performed remarkably well in maintaining the value of the enterprise. To maintain the loyalty and confidence of their employees, the Debtor obtained Bankruptcy Court approval (i) to pay merit or performance based bonuses to certain key members of management, and (ii) to enter into a retention plan providing "stay bonuses" for certain key, non-management employees. The time period for non-management employees to remain with the Debtor in order to obtain their stay bonuses was the sale of substantially all of the Debtor's assets, and all obligations under the retention plans have been satisfied or will be by the Effective Date of the Plan. With regard to the management incentive plan, various amounts are payable depending on the occurrence and timing of certain triggering events. Specifically, certain Management Participants shall receive compensation after the occurrence of triggering events which are tied to the amount of money available to Interest Holders after all Creditors have been paid in full, with interest. A copy of the Court's July 12, 2010 Order approving the MiddleBrook Employee Incentive Plan and

Authorizing Payments Thereunder is available at <http://www.kccllc.net/Middlebrook>. No other retention plans currently are in place.

iii. Setting a Bar Date, Objecting to and Resolving Certain Claims

On July 7, 2010, this Court established August 27, 2010 (the “**General Bar Date**”) as the final date to file proofs of claim on account of pre-petition Claims against the Debtor for non-governmental entities, and October 31, 2010, as the final date to file proofs of claim on account of pre-petition Claims against the Debtor for governmental entities. As of the date of this Disclosure Statement, approximately 122 proofs of claim have been filed. The total amount of the claims against the Debtor, including scheduled claims, but excluding various duplicate and amended claims, is approximately \$10.6 million (which number reflects the stipulation reached with Par as to the maximum amount of Par’s Claim, as described in greater detail below in *Section II.C.vi* of this Disclosure Statement). The Debtor has begun, and expects to continue, filing objections to certain of those claims, so the final group of creditors has yet to be determined.

iv. Rejection of Certain Executory Contracts and Unexpired Leases

Since the Petition Date, the Debtor has engaged in aggressive cost-cutting actions, including the rejection of its office lease of non-residential real property in Maryland. In addition, the Debtor has rejected several personal property leases and executory contracts which were not needed during the pendency of the Bankruptcy Case. The rejection of these contracts and leases has given rise to pre-petition rejection damage Claims, but has saved the Debtor hundreds of thousands of dollars per year in operational costs.

v. Sale of Substantially All of the Debtor’s Assets

On May 17, 2010, the Debtor filed a motion seeking approval of (i) certain bid procedures and (ii) the sale of substantially all of the Debtor’s Assets (Docket No. 64) (the “**Sale Motion**”) to the Purchaser, or another Winning Competing Bidder (as defined in the Sale Motion) following an auction. Despite its marketing efforts, the Debtor received no bids prior to the bid deadline other than the Purchaser’s initial offer. On July 28, 2010, the Bankruptcy Court entered the Sale Order approving the sale of substantially all of the Debtor’s Assets to the Purchaser and the Asset Purchase Agreement (as amended, the “**Agreement**”). The sale closed on July 30, 2010.

The purchase price consisted of: (i) \$17,300,000 and (ii) assumption of the Assumed Liabilities. The Agreement, filed as an exhibit to the Sale Motion, should be reviewed in full for additional information regarding its terms. After the Closing Date, the Debtor ceased its pharmaceutical operations and began winding up its affairs.

The Debtor’s remaining Assets consist of Cash and the Causes of Action, as well as various miscellaneous assets (the “**Remaining Assets**”). Accordingly, after paying the Record Holders of Allowed Class 3 Claims in full, with interest, the Debtor anticipates that a substantial amount of the Remaining Assets will be available for distribution to the Record Holders of Allowed Class 4 Interests on a *pro rata* basis.

vi. *The Par Claim*

On or about August 18, 2010, Par Pharmaceutical, Inc. (“Par”) filed a proof of claim (the “POC”) asserting an unsecured claim against the Debtor in an amount not less than \$11,625,000 (the “Par Claim”). In the POC, Par asserts that it has a claim against the Debtor on account of that certain Development and Commercialization Agreement between Par and Advancis Pharmaceutical Corporation, the former name of the Debtor, entered into as of May 28, 2004 and amended as of December 14, 2004 (as amended, the “Development Agreement”). In the POC, Par states that because it paid the Debtor \$23,250,000 in “Development Costs” as required by the Development Agreement and the Debtor commercialized MOXATAG, Par has a claim against the Debtor in the amount of \$11,625,000 (one half of \$23,250,000) pursuant to Section 4.2.2.3 of the Development Agreement.

On August 30, 2010, the Debtor filed an objection to the POC, requesting that the Bankruptcy Court disallow the Par Claim and expunge the POC in its entirety. The basis of such objection is that Par failed to comply with the procedures set forth for termination of the Development Agreement pursuant to Section 4.2.2.2, which renders Section 4.2.2.3 inoperative. Further, even if Section 4.2.2.3 were operative, certain unequivocal conditions precedent to a right of payment in favor of Par with respect to the Section 4.2.2.3 Amount clearly were not been satisfied as: (i) Par did not pay more than \$20,000,000 in cash to the Debtor before termination of the Development Agreement; (ii) the Debtor never successfully commercialized both an “Adult Product” and a “Pediatric Product”; (iii) there have been no net profits on account of the sale of MOXATAG; and (iv) the commercialization of the adult version of MOXATAG – the single product – was not successful.

On September 23, 2010, Par filed a response to the Debtor’s objection to the POC, and also filed a motion to refer the dispute to binding arbitration pursuant to the terms of the Development Agreement. The parties subsequently reached an agreement whereby the dispute would be referred to arbitration as requested, but that the Par POC would be capped at \$3,500,000 for all purposes in the Bankruptcy Case including distributions under the Plan. The Par Claim remains unresolved as of the date of this Disclosure Statement. If the Par Claim is allowed in full at \$3,500,000, as requested in the POC as later amended by agreement, then while Holders of Allowed Claims in Class 3 will still be paid in full, the Holders of Allowed Interests in Class 4 will receive a corresponding smaller distribution. On the other hand, if the Par Claim is completely disallowed, Holders of Allowed Interests in Class 4 will receive a substantial distribution (likely in the range of \$6 to \$9 million, although that number is difficult to predict with certainty).

vii. *Remaining Assets*

The Debtor’s remaining assets are in the process of being monetized, but it is not expected that such liquidation will materially enhance recoveries in this Case.

III. THE PLAN OF REORGANIZATION

A. Explanation Of Chapter 11.

Chapter 11 is the principal business reorganization chapter of the Bankruptcy Code. Under Chapter 11 of the Bankruptcy Code, a debtor is authorized to reorganize or liquidate its business for the benefit of itself, its creditors and stockholders. In addition to permitting rehabilitation or liquidation of a debtor, another goal of Chapter 11 is to promote equality of treatment of creditors and equity security holders of equal rank with respect to the distribution of a debtor's assets.

The consummation of a plan of reorganization or liquidation is the principal objective of a Chapter 11 case. A plan of reorganization or liquidation sets forth the means for satisfying claims against, and equity interests in, a debtor. Confirmation of a plan of reorganization or liquidation by the Bankruptcy Court makes the plan binding upon a debtor, any issuer of securities under the plan, any person acquiring property under the plan and any creditor or equity security holder of a debtor. Subject to certain limited exceptions, the confirmation order discharges a debtor from any debt that arose prior to the date of confirmation of the plan and substitutes therefor the obligations specified under the confirmed plan.

After a plan of reorganization has been filed, the holders of claims against or interests in a debtor are permitted to vote to accept or reject the plan, if their claims or interests are impaired. Before soliciting acceptances of the proposed plan, however, Section 1125 of the Bankruptcy Code requires a debtor to prepare a disclosure statement containing adequate information of a kind, and in sufficient detail, to enable a hypothetical reasonable investor to make an informed judgment about the plan. This Disclosure Statement is presented to holders of Claims against and Interests in the Debtor to satisfy the requirements of Section 1125 of the Bankruptcy Code.

Chapter 11 does not require that each holder of a claim against or interest in a debtor vote in favor of a plan of reorganization in order for the bankruptcy court to confirm the plan. At a minimum, however, the plan of reorganization must be accepted by a majority in number and two-thirds in amount of those claims actually voting in at least one class of impaired claims under the plan of reorganization. Holders of impaired claims or interests who fail to vote will not be counted as either accepting or rejecting the plan.

In general, a class is "impaired" if the legal, equitable, or contractual rights attaching to the claims or equity interests of that class are modified under the plan of reorganization. Classes of claims that are not impaired under a plan of reorganization are conclusively presumed to have accepted the plan of reorganization and thus are not entitled to vote. Classes of claims or equity interests receiving no distribution under a plan are impaired and are conclusively presumed to have rejected the plan and thus are not entitled to vote. Acceptances of the Plan in this case are being solicited only from those persons who hold Claims in an impaired Class that is not a deemed accepting or rejecting Class.

Even if all classes of claims and equity interests accept a plan of reorganization, the bankruptcy court may nonetheless find such a plan unconfirmable. Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a plan of reorganization and,

among other things, requires that a plan of reorganization meet the “best interests” test and be feasible. The “best interests” test generally requires that the value of the consideration to be distributed to the holders of claims or equity interests under a plan may not be less than those parties would receive if the debtor were liquidated under a hypothetical liquidation occurring under Chapter 7 of the Bankruptcy Code. Under the “feasibility” requirement, the court must find that there is a reasonable probability that the debtor will be able to meet its obligations under its plan of reorganization without the need for further financial reorganization. The Debtor believes that both of these requirements are satisfied by the Plan. *See Section IV, Confirmation of the Plan.*

The proponent of the plan of reorganization (in this case, the Debtor) also must meet all other applicable requirements of Section 1129(a) of the Bankruptcy Code (except Section 1129(a)(8) if the proponent proposes to seek confirmation of the plan under the provisions of Section 1129(b) of the Bankruptcy Code). These other requirements include, among other things, that the Plan comply with applicable provisions of Title 11 and other applicable law, that the plan be proposed in good faith and that at least one impaired class of creditors has voted to accept the plan. The Debtor believes that the Plan satisfies all of these and all other applicable requirements of Section 1129(a) of the Bankruptcy Code.

The bankruptcy court may confirm a plan of reorganization even though fewer than all the classes of impaired claims and interests accept it. For a plan of reorganization to be confirmed despite the rejection of a class of impaired claims or interests, the proponent of the plan of reorganization must show, among other things, that the plan of reorganization does not discriminate unfairly and that the plan of reorganization is fair and equitable with respect to each impaired class of claims or interests that has not accepted the plan of reorganization.

Under Section 1129(b) of the Bankruptcy Code, a plan is “fair and equitable” as to a class if, among other things, the plan provides: (a) with respect to secured claims, that each holder of a claim included in the rejecting class will receive or retain, on account of its claim, property that has a value, as of the effective date of the plan of reorganization, equal to the allowed amount of such claim; and (b) with respect to unsecured claims and equity interests, that the holder of any claim or equity interest that is junior to the claims or equity interests of such class will not receive or retain, on account of such junior claim or equity interests, any property at all unless the senior class is paid in full. The bankruptcy court must further find that the economic terms of the plan of reorganization do not unfairly discriminate, as provided in Section 1129(b) of the Bankruptcy Code, with respect to the particular objecting class. The Debtor believes that it will be able to satisfy these requirements of Section 1129(b) of the Bankruptcy Code, as well.

B. Approval Of The Plan.

The Debtor proposed the Plan over the alternative of converting the Debtor’s Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code because the Debtor believes that: (i) the Plan ensures a timely distribution of the Debtor’s remaining Assets; and (ii) the Plan avoids unnecessary costs to the Debtor’s Estate which would accrue should the Debtor’s Bankruptcy Case be converted to Chapter 7 of the Bankruptcy Code. For these reasons, the Debtor is in favor of the Plan and urges its confirmation.

i. Voting on the Plan

Pursuant to Section 1124 of the Bankruptcy Code, a Class of Claims may be “Impaired” if the Plan alters the legal, equitable or contractual rights of the Holders of such Claims or Interests treated in such Class. Only the Holders of such Impaired Claims or Interests are entitled to vote on the Plan. There is no Class of Claims potentially Impaired by the Plan, and thus the Holders of Claims in this case are not entitled to vote. Class 4 (Interests) is not entitled to vote on the Plan because that Class will either: (a) receive the residual value of the Estate, in which case the Interest Holders’ legal, equitable or contractual rights are being left unaltered, and thus are not Impaired, and are therefore deemed to accept the Plan, or (b) if the Bankruptcy Court determines that such Class is Impaired, then such Class is deemed to reject the Plan. In the latter event, the Plan can still be confirmed utilizing the “cram down” provisions of Section 1129(b) of the Bankruptcy Code.

ii. Final Approval of the Disclosure Statement and Confirmation of the Plan

The requirements for Confirmation of the Plan are set forth in Section 1129 of the Bankruptcy Code. The requirements for the Disclosure Statement are set forth in Section 1125 of the Bankruptcy Code. To confirm the Plan, the Bankruptcy Court must hold the Confirmation Hearing to determine whether the Plan meets the requirements of Section 1129 of the Bankruptcy Code. The Bankruptcy Court has set **December 13, 2010, at 11:30 a.m. (Eastern Time)**, for final approval of the Disclosure Statement and the Confirmation Hearing.

Any party-in-interest may object to the final approval of the Disclosure Statement and the Confirmation of the Plan and appear at the Confirmation Hearing to pursue such objection. The Court has set **December 6, 2010, at 4:00 p.m. (Eastern Time)**, as the deadline for filing and serving objections to the final approval of the Disclosure Statement and Confirmation of the Plan. Objections to final approval of the Disclosure Statement and Confirmation must be electronically filed with the Bankruptcy Court and served on counsel to the Debtor, the U.S. Trustee, counsel to the Creditors’ Committee, and counsel to the Equity Committee.

iii. Effect of Confirmation

Except as otherwise provided in the Plan or in the Confirmation Order, confirmation will effect the distribution of the Debtor’s remaining assets and the dissolution of the Debtor. Confirmation serves to make the Plan binding upon the Debtor, all Creditors, Interest Holders and other parties-in-interest, regardless of whether they cast a Ballot to accept or reject the Plan.

C. Summary Of The Classes Of Claims And Interests.

i. Classification of Claims and Interests under the Plan

All Allowed Claims and Interests, except the Allowed Unclassified Claims, are placed in the Classes set forth in Article II of the Plan. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Expenses, Professional Fee Claims and Priority Tax Claims have not been classified. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest qualifies within the description of that Class and is classified in other

Classes to the extent that any remainder of the Claim or Interest qualifies within the description of such other Classes.

ii. Class 1 Priority Non-Tax Claims

Claims in this Class consist of employee claims against the Debtor for unpaid severance, benefits and the like. To the extent such Claims have not been previously satisfied, each Holder of an Allowed Class 1 Priority Non-Tax Claim shall be paid by the Debtor the full amount of such Allowed Claim, in Cash on the Effective Date or on the date on which such Allowed Claim becomes due and payable pursuant to the terms of the agreement upon which such Allowed Claim is based, or any applicable Order of the Bankruptcy Court.

iii. Class 2 Secured Claims

Claims in this Class consist primarily of security deposits being held by the Holders of Claims against the Debtor. The Debtor believes that minimal amounts are due with respect to Class 2 Secured Claims, as such Claims have been previously satisfied, shall be Reinstated or shall be satisfied by the Debtor prior to the Effective Date. Each Holder of an Allowed Secured Claim that has not been satisfied shall either (a) be paid by the Debtor the full amount of such Allowed Secured Claim, in Cash on the Effective Date or on the date on which such Allowed Secured Claim becomes due and payable pursuant to the terms of the agreement upon which such Allowed Secured Claim is based, or any applicable Order of the Bankruptcy Court, or (b) be Reinstated.

iv. Class 3 General Unsecured Claims

Claims in this Class consist of all other Claims against the Debtor, and are primarily trade Claims or lease or executory contract rejection Claims. As set forth in Article II of the Plan, the Holders of Allowed Class 3 General Unsecured Claims shall be paid in full, plus such interest as may be legally allowable on such Claim at the non-default contractual rate, or, if no contractual rate is stated, then at the federal judgment rate then prevailing, accruing from the Petition Date to the Effective Date, in Cash. Such payments shall begin within thirty (30) days of the Effective Date.

v. Class 4 Interests

As set forth in Article II of the Plan, the Holders of Allowed Class 4 Interests will receive their *pro rata* share of the Cash remaining in the Estate after all Allowed Claims have been paid in full, or reserved for, pursuant to the terms of the Plan, and Disputed Claim have been reserved for pursuant to the terms of the Plan.

D. Implementation And Execution Of The Plan.

i. Effective Date

As set forth in the Plan, the Plan shall become effective on the date which is the first Business Day on which each condition set forth in Article VIII of the Plan has been satisfied or waived as set forth therein. Upon the occurrence of the Effective Date, the Debtor will file, serve

and post on the Noticing Agent Website a notice of confirmation and occurrence of the Effective Date.

ii. Summary of Means of Implementation and Execution of the Plan

Articles V and VI of the Plan set forth the means by which the Plan shall be implemented and executed, which generally include: the setting of an Administrative Expense Bar Date, preserving Causes of Action belonging to the Estate, the appointment of the Plan Administrator to liquidate the remaining assets of the Debtor, including bringing the Causes of Action, making distributions to Holders of Allowed Claims and Interests, providing for the dissolution of the Debtor, and the means by which objections to and allowance of Claims will occur for purposes of the distributions.

With regard to Claim objections, parties will have until the later of (a) sixty (60) days after the Effective Date, or (b) sixty (60) days after a Claim is filed, to file objections to Claims. The Bankruptcy Court may extend such deadline upon motion for good cause shown. Any objection not filed by such deadline shall be deemed waived, and the Claim shall be an Allowed Claim in the amount set forth on the proof of claim Filed by the Holder of such Claim.

iii. Optional Provisions

The Plan also contains certain provisions which may be triggered at the Debtor's option. Those provisions include the implementation of Liquidating Trust to hold the balance of the Estate Assets (in which case the Plan Administrator would also become the trustee of the Liquidating Trust) (Section 5.13 of the Plan), and the appointment of a Plan Committee to oversee the Plan Administrator and execution of the Plan (Section 5.14 of the Plan). The Debtor, the Creditors' Committee and the Equity Committee are still in the process of negotiating over certain provisions of the Plan, including these optional provisions, and considering all the implications thereof, and accordingly, a decision has not yet been made as to the implementation of those optional provisions. If either or both options are elected, the Debtor will provide further disclosure thereof in connection with the filing of the Plan Supplement.

iv. Executory Contracts and Unexpired Leases

As stated in Article VII of the Plan, any executory contracts and unexpired leases of the Debtor not assumed and assigned, or rejected, during the Bankruptcy Case shall be deemed rejected on the Effective Date. Article VII of the Plan further sets forth procedures for asserting and resolving Rejection Claims, if any.

v. Conditions Precedent to Confirmation and Consummation of the Plan

Article VIII of the Plan sets forth the conditions that must occur prior to both Confirmation of the Plan and the occurrence of the Effective Date. This Article also describes the Debtor's ability to waive such conditions, as well as the effect of non-occurrence of the conditions to the Effective Date, including the vacation of the Confirmation Order. If the Confirmation Order is vacated pursuant to Section 8.4 of the Plan, (i) the Plan shall be null and void in all respects; and (ii) nothing contained in the Plan shall (a) constitute a waiver or release

of any Claims by or against, or any Interest in, the Debtor or (b) prejudice in any manner the rights of the Debtor or any other party in interest.

vi. Exculpation and Release

THE PLAN CONTAINS EXCULPATION AND RELEASE PROVISIONS THAT ARE CONSISTENT WITH THOSE THAT HAVE BEEN APPROVED BY THE BANKRUPTCY COURT AND OTHER COURTS OF THE THIRD CIRCUIT. THE EXCULPATION AND RELEASE PROVISIONS PROVIDE AS FOLLOWS:

From and after the Effective Date, the Released Parties shall neither have nor incur any liability to, or be subject to any right of action by, any Holder of a Claim or Interest, or any other party in interest, or any of their respective employees, representatives, financial advisors, attorneys, or agents acting in such capacity, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Bankruptcy Case, formulating, negotiating or implementing this Plan, the solicitation of acceptances of this Plan, the pursuit of approval of the Disclosure Statement and confirmation of this Plan, the confirmation of this Plan, the Plan Documents, the consummation of this Plan or the administration of this Plan or the property to be distributed under this Plan; provided, however, that the foregoing provision shall not apply to an act or omission that is determined by a Final Order of the Bankruptcy Court to have constituted willful misconduct or gross negligence. Any of the Released Parties shall be entitled to rely, in all respects, upon the advice of counsel with respect to their duties and responsibilities under the Plan.

Plan at § 9.2.

As of the Effective Date, the Debtor shall be deemed to have forever released, waived and discharged all claims, demands, debts, rights, causes of action or liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise against any of the Released Parties, that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to any of the Debtor, the Bankruptcy Case, this Plan or the Disclosure Statement; provided, that, nothing herein shall release any of such parties from their obligations under the Plan or the Plan Administrator Agreement or, if implemented, the Liquidating Trust Agreement, and provided further that nothing herein shall release any claim related to an act or omission that is determined by a Final Order to have constituted willful misconduct or gross negligence.

Plan at § 9.5.

vii. *Miscellaneous Provisions*

Article X of the Plan contains several miscellaneous provisions, including: (i) the retention of jurisdiction by the Bankruptcy Court following the Confirmation Date; (ii) the Debtor's payment of statutory fees pursuant to 28 U.S.C. § 1930; (iii) the dissolution of the Creditors' Committee and the Equity Committee; (iv) the termination of KCC, in its capacity as claims, noticing and balloting agent; and (v) the dissolution of the Debtor and, if implemented, the Liquidating Trust.

viii. *Final Fee Hearing and Final Decree*

Article XI of the Plan describes the Professional Fee Claim Bar Date and the Final Fee Hearing. The Debtor will file, serve and post on the Noticing Agent Website a notice of the Professional Fee Claim Bar Date and the Final Fee Hearing. The Professional Fee Claim Bar Date and the Final Fee Hearing Time can also be obtained by contacting counsel for the Debtor.

ix. *Entry of the Final Decree and Closing of the Case*

As set forth in Section 10.15 of the Plan, subsequent to the Effective Date, the Final Fee Hearing and the Plan Administrator's fulfillment of the standards for the closing of the Case, the Plan Administrator shall cause to be Filed a proposed form of order under certification of counsel (the "**Final Decree Certification**") requesting the entry of a Final Decree pursuant to Section 350(a) of the Bankruptcy Code. Such Final Decree shall close the Case. At that time, the Debtor believes that the Estate will be fully administered as (i) the Confirmation Order will be a Final Order; (ii) the distributions will be completed and (iii) all motions, contested matters and adversary proceedings will be resolved.

Section 350(a) of the Bankruptcy Code provides that a case shall be closed "after an estate is fully administered and the court has discharged the trustee." 11 U.S.C. § 350(a). Likewise, Rule 3022 of the Bankruptcy Rules provides that, "after an estate is fully administered in a chapter 11 reorganization, the court . . . shall enter a final decree closing the case." Fed. R. Bankr. P. 3022. Further, Local Rule 5009-1 provides that, "upon written motion, a party in interest may seek the entry of a final decree at any time after the confirmed plan has been substantially consummated provided that all fees under 28 U.S.C. § 1930 have been paid." Del. Bankr. L.R. 5009-1(a). Based upon the foregoing, the Debtor believes that the Bankruptcy Court's entry of the Final Decree shall be appropriate and necessary subsequent to the Effective Date upon submission of the Final Decree Certification. *See In re SLI Inc.*, 2005 WL 1668396, at *2 (Bankr. D. Del. June 24, 2005) (citations omitted).

IV. CONFIRMATION OF THE PLAN

A. Requirements For Confirmation Of The Plan.

The Debtor will request that the Bankruptcy Court hold a Confirmation Hearing as promptly as practicable, upon such notice to parties in interest as is required by the Bankruptcy Code and the Bankruptcy Court. Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of the Plan. Any procedures established by the

Bankruptcy Court for the filing and service of objections to confirmation of the Plan will be provided to parties in interest.

In order for the Plan to be confirmed, and regardless of whether all Impaired Classes of Claims vote to accept the Plan, the Bankruptcy Code requires that the Bankruptcy Court determine that the Plan complies with the requirements of Section 1129 of the Bankruptcy Code. Section 1129 of the Bankruptcy Code requires for confirmation, among other things, that: (i) the Plan be accepted by the requisite votes of holders of Impaired Claims and Interests except to the extent that confirmation, despite dissent, is available under Section 1129(b) of the Bankruptcy Code, (ii) the Plan is feasible (that is, there is a reasonable probability that the Debtors will be able to perform their obligations under the Plan without further financial reorganization); and (iii) the Plan meets the requirements of Section 1129(a)(7) of the Bankruptcy Code, which requires that with respect to each Impaired Class, each holder of a Claim or Interest either (a) accepts the Plan or (b) receives at least as much pursuant to the Plan as such holder would receive in a liquidation of the Debtors under Chapter 7 of the Bankruptcy Code.

Although the Debtors believe that the Plan will meet such tests, as well as the other requirements of Section 1129, there can be no assurance that the Bankruptcy Court will reach the same conclusion.

i. Feasibility of the Plan

The Bankruptcy Code requires that, in order to confirm a plan, the Bankruptcy Court must find that confirmation of such plan is not likely to be followed by the liquidation or the need for further financial reorganization of the debtor unless contemplated by the plan. The Plan provides for the liquidation and distribution of all of the Debtor's Assets. At present, the Debtor has cash on hand of approximately \$17.4 million. The Administrative Expenses, the Priority Tax Claims, the Priority Non-Tax Claims, the Secured Claims and the General Unsecured Claims are, in the aggregate substantially less than such amount. Accordingly, the Debtor believes that all Plan obligations will be satisfied without the need for further reorganization of the Debtor.

ii. Best Interests Test

Notwithstanding acceptance of a plan by the requisite number of creditors in an impaired class or the deemed acceptance by unimpaired classes, the Bankruptcy Court must still independently determine that such plan provides each member of each impaired class of claims and interests a recovery that has a value at least equal to the value of the recovery that each such Person would receive if the debtor was liquidated under Chapter 7 of the Bankruptcy Code on the effective date of such plan.

There is no potentially Impaired Class entitled to vote on the Plan. However, even if such a Class existed, given that the Plan contemplates a liquidation of assets and distribution to Holders of Claims and Interests in a manner substantially similar to what would occur under Chapter 7, the Debtor believes that the Plan satisfies the best interests test. Among other things, the recoveries expected to be available to Holders of Allowed Claims under the Plan will be equal to or greater than the recoveries expected to be available in a Chapter 7 liquidation.

In a typical Chapter 7 case, a trustee is elected or appointed to liquidate a debtor's assets for distribution to creditors in accordance with the priorities set forth in the Bankruptcy Code. Generally, secured creditors are paid first from the proceeds of sales of the properties securing their liens. If any assets are remaining in the bankruptcy estate after satisfaction of secured creditors' claims from their collateral, administrative expenses are paid next. Unsecured creditors are paid from any remaining sales proceeds, according to their respective priorities. Unsecured creditors with the same priority share in proportion to the amount of their allowed claims in relationship to the total amount of allowed claims held by all unsecured creditors with the same priority. Finally, equity interest holders receive the balance that remains, if any, after all creditors are paid.

Substantially all of the Debtor's Assets have already been liquidated during the Bankruptcy Case through the sale consummated by the Debtor pursuant to the Sale Order. Although the Plan effects a liquidation of the Debtor's remaining Assets similar to what would occur under a Chapter 7 liquidation, the Debtor believes that the Plan provides the best source of recovery to holders of Allowed Claims and Interests by minimizing the administrative costs of the liquidation. Liquidating the Debtor's estate under Chapter 7 is not likely to provide a timely distribution to Holders of Allowed Claims and Interests and would likely provide a smaller distribution to Creditors and Interest Holders because of the fees and expenses that would be incurred during a Chapter 7 liquidation, including potential added time and expense incurred by the Trustee and any retained professionals in familiarizing themselves with the Bankruptcy Case.

For the foregoing reasons, the Debtor believes that the Plan is in the best interests of Creditors.

B. Cram Down.

To obtain confirmation under the concept known as "cram down," the Debtor must demonstrate to the Bankruptcy Court that the Plan "does not discriminate unfairly" and is "fair and equitable" with respect to any dissenting Class. The "unfair discrimination" test requires, among other things, that the Plan recognize the relative priorities among unsecured Creditors and Interest Holders. The Bankruptcy Code establishes different "fair and equitable" tests for secured creditors, unsecured creditors and equity interest holders. The respective tests are as follows:

i. Secured Creditors

Either (i) each impaired creditor of the rejecting class (x) retains its liens in the collateral securing such Creditor's claim or in the proceeds thereof to the extent of the Allowed amount of its secured claim and (y) receives deferred cash payments in at least the Allowed amount of such secured claim with a present value at the Effective Date at least equal to such creditor's interest in its collateral or in the proceeds thereof or (ii) the plan provides each impaired secured creditor with the indubitable equivalent of its claim.

ii. Unsecured Creditors

Either (i) each impaired unsecured Creditor of the rejecting class receives or retains under the plan property of a value equal to the amount of its Allowed Claim or (ii) the holders of

claims and interests that are junior to the claim of the dissenting class do not receive or retain any property under the plan.

iii. Equity Interest Holders

Either (i) each equity interest holder of the rejecting class receives or retains under the plan property of a value equal to the greater of (x) the fixed liquidation preference or redemption price, if any, of the equity interest it holds or (y) the value of such equity interest or (ii) the holders of interests that are junior to such equity interest do not receive or retain any property under the plan.

If all other conditions to confirmation are met, the Debtors will seek to apply Section 1129(b) of the Bankruptcy Code to the extent the Plan is not accepted by any Impaired Class of unsecured Claims or Interests, if one is deemed to exist.

V. ALTERNATIVES TO THE PLAN

A. Continuation Of The Bankruptcy Case.

The Debtor is not a going concern and thus there is no benefit to remaining in Chapter 11 for the purpose of reorganizing the Debtor.

B. Alternative Plan(s).

The Debtor does not believe that there are any alternative plans. The Debtor believes that the Plan, as described herein, enables holders of Claims and Interests to realize the greatest possible value under the circumstances, and that, compared to any alternative plan, the Plan has the greatest chance to be confirmed and consummated.

VI. CERTAIN RISK FACTORS TO BE CONSIDERED

A. Certain Bankruptcy Considerations.

Although it is contemplated that there is no Class voting on the Plan, if an Impaired Class is deemed to exist, and that Class votes to reject the Plan, then the requirements for “cram down” may not be met. Section 1129 of the Bankruptcy Code requires, among other things, that the value of distributions to dissenting holders of Claims or Interests may not be less than the value such Holders would receive if the Debtor was liquidated under Chapter 7 of the Bankruptcy Code. Although the Proponent believes that the Plan will meet such requirement, there can be no assurance that the Bankruptcy Court will reach the same conclusion. Further, the requirement that there be at least one Impaired accepting Class of Claims may not be met, unless the Bankruptcy Court were to find that there was another Impaired Class of Claims entitled to vote on the Plan.

B. Claims Estimation.

There can be no assurance that the estimated amount of Claims set forth in the Plan is correct, and the actual allowed amounts of Claims may differ from the estimates. Any value

given as to the Claims against and the Assets of the Debtor is based upon an estimation of such value. Moreover, except as otherwise provided in the Plan, the Debtor reserves the right to object to the amount or classification of any Claim under the Plan. Therefore, the estimates set forth in this Disclosure Statement cannot be relied on by any Holder of a Claim where such Claim is subject to an objection. Any Holder of a Claim that is subject to an objection thus may not receive its expected share of the estimated distributions described in this Disclosure Statement.

C. Parties-in-Interest May Object to the Debtor's Classification of Claims and Interests.

Section 1122 of the Bankruptcy Code provides that a plan may place a claim or an equity interest in a particular class only if such claim or equity interest is substantially similar to the other claims or equity interests in such class. The Debtor believes that the classification of Claims and Interests under the Plan complies with the requirements set forth in the Bankruptcy Code because the Debtor created 3 Classes of Claims and 1 Class of Interests, each encompassing Claims or Interests, as applicable, that are substantially similar to the other Claims and Interests in each such Class. Further, the Debtor submits that classification is not an issue here because all Classes are Unimpaired under the Plan. Nevertheless, there can be no assurance the Bankruptcy Court will reach the same conclusion with respect to classification.

D. The Debtor May Not Be Able to Secure Confirmation of the Plan.

As discussed above, Section 1129 of the Bankruptcy Code sets forth the requirements for confirmation of a Chapter 11 plan, including, among other requirements, a finding by the bankruptcy court that confirmation of such plan is not likely to be followed by a liquidation or a need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan.

There can be no assurance that the Bankruptcy Court will confirm the Plan. Even if the Bankruptcy Court determines that the Disclosure Statement is appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for confirmation had not been met, including the requirement that confirmation of such plan is not likely to be followed by a liquidation or a need for further financial reorganization.

Confirmation of the Plan is also subject to certain conditions as described in the Plan. If the Plan is not confirmed, it is unclear what distributions, if any, holders of Allowed Claims would receive with respect to their Allowed Claims.

The Debtor, subject to the terms and conditions of the Plan, reserves the right to modify the terms and conditions of the Plan as necessary for Confirmation, subject to the requirements, including notice requirements, of the Bankruptcy Code. Any such modifications could result in a less favorable treatment of any Class, as well as of any Classes junior to such Class, than the treatment currently provided in the Plan. Such a less favorable treatment could include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan or no distribution of property whatsoever under the Plan.

E. Risk of Non-Occurrence of the Effective Date.

Although the Debtors believe that the Effective Date may occur quickly after the Confirmation Date, there can be no assurance as to such timing, or as to whether such Effective Date will, in fact, occur.

VII. CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

THE DEBTOR HAS NOT REQUESTED AND WILL NOT REQUEST A RULING FROM THE INTERNAL REVENUE SERVICE OR AN OPINION OF COUNSEL WITH RESPECT TO ANY OF THE TAX ASPECTS OF THE PLAN. THUS, NO ASSURANCE CAN BE GIVEN AS TO THE TAX CONSEQUENCES OF THE PLAN. EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT ITS OWN TAX ADVISOR FOR THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

The following is a summary of certain United States federal income tax consequences of the Plan to the Debtor and certain Holders of Claims and Interests. This summary is based on the Internal Revenue Code of 1986, as amended (the "IRC"), Treasury Regulations thereunder and administrative and judicial interpretations and practice, all as in effect on the date of the Disclosure Statement and all of which are subject to change, with possible retroactive effect. Due to the lack of definitive judicial and administrative authority in a number of areas, substantial uncertainty may exist with respect to some of the tax consequences described below. There can be no assurance that the Internal Revenue Service (the "IRS") will not challenge one or more of the tax consequences of the Plan described below.

This summary does not apply to Holders of Claims or Interests that are not United States Persons (as such term is defined in the IRC) or that are otherwise subject to special treatment under United States federal income tax law (including, without limitation, banks, governmental authorities or agencies, financial institutions, insurance companies, pass-through entities, tax-exempt organizations, brokers and dealers in securities, mutual funds, small business investment companies and regulated investment companies). The following discussion assumes that Holders of Allowed Claims and Interests hold such Claims and Interests as "capital assets" within the meaning of section 1221 of the IRC. Moreover, this summary does not purport to cover all aspects of United States federal income taxation that may apply to the Debtor and Holders of Allowed Claims or Interests based upon their particular circumstances. Additionally, this summary does not discuss any tax consequences that may arise under any laws other than United States federal income tax law, including under state, local or foreign tax law.

ACCORDINGLY, THE FOLLOWING SUMMARY OF CERTAIN UNITED STATES FEDERAL INCOME TAX CONSEQUENCES IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM OR INTEREST. ALL HOLDERS OF CLAIMS AND INTERESTS ARE URGED TO CONSULT THEIR OWN TAX ADVISORS FOR THE FEDERAL, STATE, LOCAL AND OTHER TAX CONSEQUENCES APPLICABLE UNDER THE PLAN.

INTERNAL REVENUE SERVICE CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE INTERNAL REVENUE SERVICE, ANY TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, BY ANY TAXPAYER FOR THE PURPOSE OF AVOIDING TAX-RELATED PENALTIES UNDER THE INTERNAL REVENUE CODE. TAX ADVICE CONTAINED IN THIS DISCLOSURE STATEMENT (INCLUDING ANY ATTACHMENTS) IS WRITTEN TO SUPPORT THE PROMOTION, MARKETING OR PROMOTION OF THE TRANSACTIONS OR MATTERS ADDRESSED BY THE DISCLOSURE STATEMENT. EACH TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT TAX ADVISOR.

A. Certain United States Federal Income Tax Consequences to the Debtor.

Under the Plan, the Debtor is liquidating its assets, and the proceeds thereof will be distributed to Holders of Claims and Interests pursuant to the Plan. The Debtor's liquidation of its assets may result in the Debtor recognizing taxable gain or loss, based on the difference between the fair market value of these assets and the Debtor's tax basis in these assets. To the extent that the Debtor realizes gain from the transfer of these assets the Debtor believes that it will have sufficient current losses and net operating loss carryovers to shelter these gains, although there could be some liability to the Debtor in certain states and under the federal alternative minimum tax. As discussed above, under the Plan, the Debtor, in consultation with the Creditors' Committee and the Equity Committee, may elect to create the Liquidating Trust to hold, liquidate, and the distribute the Estate Assets. If the Debtor, in consultation with the Creditors' Committee and the Equity Committee, elects to create a Liquidating Trust, the Debtor will provide a fulsome discussion of the tax consequences of that election in the Plan Supplement.

B. Certain United States Federal Income Tax Consequences to Holders of Claims in Classes 1, 2, 3 and 4 Claims and Interests.

The federal income tax consequences of the Plan to Holders of Claims in Classes 1, 2 and 3 and Interests in Class 4 and the character, amount, and timing of income, gain, or loss recognized as a consequence of the Plan and the distributions provided for by the Plan generally will depend upon, among other things: (i) the manner in which a Holder acquired a Claim or Interest; (ii) the length of time a Claim or Interest has been held; (iii) the Holder's method of tax accounting; (iv) whether the Holder of a Claim or Interest has taken a bad debt or worthless stock deduction with respect to the Claim or Interest (or any portion of the Claim or Interest) in the current or prior years; (v) whether the transaction is treated as a "closed transaction" or an "open transaction"; and (vi) in the case of a Claim Holder, (a) whether the Claim was acquired at a discount, (b) whether the Claim Holder has previously included accrued but unpaid interest with respect to the Claim, and (c) whether the Claim is an installment obligation for federal income tax purposes. Therefore, Holders of Claims and Interests are urged to consult their tax advisors for information that may be relevant to their particular situations and circumstances and the particular tax consequences to them of the transactions contemplated by the Plan.

i. Certain United States Federal Income Tax Consequences to Holders of Claims in Classes 1, 2 and 3

a. General

Pursuant to the Plan, Holders of Claims in Classes 1, 2 and 3 will receive, in full satisfaction and discharge of their Claims, either Cash in the amounts provided in the Plan or the Collateral securing their Claims (if applicable). A Claim Holder who receives Cash or Collateral in exchange for its Claim pursuant to the Plan generally will recognize income, gain or loss, for federal income tax purposes, in an amount equal to the difference between (1) the amount of Cash or the value of the Collateral received in exchange for its Claim and (2) its adjusted tax basis in such Claim. Such gain or loss should be capital in nature (subject to the “market discount” rules described below) and should be long term capital gain or loss if the Holder held the Claim for more than one year. To the extent that any portion of the Cash or Collateral received in the exchange is allocable to accrued interest, the Holder may recognize ordinary income, which is addressed in the discussion below regarding accrued interest.

b. Accrued Interest

To the extent that any amount received by a Holder of a Claim is attributable to accrued but unpaid interest, such amount should be taxable to the Claim Holder as interest income. Conversely, a Holder of a Claim may be able to recognize a deductible loss to the extent that any accrued interest on such Claim was previously included in the Holder’s gross income but was not paid in full by the Debtor. Such loss may be ordinary, but the tax law is unclear on this point.

If the fair value of the consideration is not sufficient to fully satisfy all principal and interest on Allowed Claims, the extent to which such consideration will be attributable to accrued but unpaid interest is unclear. Under the Plan, the aggregate consideration to be distributed to Holders of Allowed Claims in each Class will be allocated first to the principal amount of Allowed Claims, with any excess allocated to unpaid interest that accrued on such Claims, if any. Certain legislative history indicates that an allocation of consideration as between principal and interest provided in a Chapter 11 plan of reorganization is binding for United States federal income tax purposes, while certain Treasury Regulations treat payments as allocated first to any accrued but unpaid interest. The IRS could take the position that the consideration received by the Claim Holder should be allocated in some way other than as provided in the Plan. Holders of Claims should consult their own tax advisors regarding the proper allocation of the consideration received by them under the Plan.

c. Market Discount

Under the “market discount” provisions of IRC sections 1276 through 1278, some or all of the gain realized by a Holder of a Claim that is treated as a debt instrument for federal income tax purposes who exchanges the Claim for Cash and/or Collateral on the Effective Date may be treated as ordinary income (instead of capital gain) to the extent of the amount of “market discount” on the Claim. In general, a debt instrument is considered to have been acquired with “market discount” if its holder’s adjusted tax basis in the debt instrument is less than (i) the sum of all remaining payments to be made on the debt instrument, excluding “qualified stated

interest,” or, (ii) in the case of a debt instrument issued with original issue discount, its adjusted issue price. However, a debt obligation is not a “market discount bond” if the excess is less than a statutory de minimis amount (equal to 0.25% of the debt obligation’s stated redemption price at maturity or revised issue price, in the case of a debt obligation issued with original issue discount, multiplied by the number of complete years remaining until maturity at the time of the acquisition).

Any gain recognized by a Claim Holder on the taxable disposition of Claims that had been acquired with market discount should be treated as ordinary income to the extent of the market discount that accrued thereon while such Claims were considered to be held by the Claim Holder (unless the Claim Holder elected to include market discount in income as it accrued).

ii. Certain United States Federal Income Tax Consequences to Holders of Interests in Class 4

The Plan provides that Holders of Interests in Class 4 will receive, in full satisfaction, settlement, release, and discharge of and in exchange for their Interests, their respective Pro Rata Shares of any remaining Cash in the Estate, but only after: (i) the payment in full of (or establishment of appropriate reserves for) all Allowed Claims existing at the time of the relevant Distribution or Subsequent Distribution Date, plus interest; (ii) appropriate reserves have been established for Disputed Claims; and (iii) appropriate reserves have been established for ongoing expenses of administration of the Estate. The federal income tax treatment of an Interest Holder’s exchange of its Interest for the right to its Pro Rata Share of any remaining Cash in the Estate (such right, the “**Equity Distribution Right**”) is not entirely clear. Such treatment will depend in part on whether the Interest Holder’s exchange of its Interest for the Equity Distribution Right is a “closed transaction” or an “open transaction” for federal income tax purposes, and in part on whether the Equity Distribution Right is treated as a right to payment under a contract or as a debt instrument for federal income tax purposes. Although not free from doubt, because the amounts ultimately distributable to Interest Holders pursuant to the Equity Distribution Right are contingent upon the resolution of outstanding Disputed Claims (including the Par Claim), the Equity Distribution Right most likely should not be treated as a debt instrument for federal income tax purposes. The following discussion assumes that Interest Holders will hold their Equity Distribution Rights as capital assets within the meaning of IRC section 1221.

“Open transaction” treatment will apply only if the fair market value of the Equity Distribution Right cannot be ascertained at the time of the exchange (i.e., the Effective Date). The IRS has taken the position, as reflected in applicable Treasury Regulations, that only in “rare and extraordinary cases” is the value of property so uncertain that open transaction treatment is available. The Debtor believes that “closed transaction” treatment probably applies and that the Interest Holders’ right to receive distributions of any remaining Cash in the Estate pursuant to the Plan is a right to one or more payments under a contract, and the remainder of this discussion assumes that these positions will be respected for federal income tax purposes. The IRS is not bound by any position taken by the Debtor, and may characterize the Equity Distribution Right as a debt instrument or otherwise. The IRS could also determine that open transaction treatment, rather than closed transaction treatment, applies to the exchange. If the IRS disagrees with any position taken by the Debtor, the tax treatment to Interest Holders who receive their respective

Pro Rata Shares of any remaining Cash in the Estate in exchange for their Interests may be materially different from the treatment described herein. **The Debtor does not and cannot guaranty that the IRS will adopt the analysis set forth herein, and the Debtor does not intend to seek any ruling from the IRS regarding the same. Therefore, Interest Holders who exchange their Interests for the Equity Distribution Right pursuant to the Plan are urged to consult their tax advisors regarding their tax treatment.**

Under the Debtor's analysis that an Interest Holder's exchange of its Interest in Class 4 for the Equity Distribution Right pursuant to the Plan is treated as a "closed transaction" for federal income tax purposes, the Interest Holder will generally recognize gain or loss on the exchange equal to the difference between (x) the sum of (1) any Cash received by the Interest Holder on the Effective Date and (2) the fair market value (on the Effective Date) of the Equity Distribution Right, and (y) the Interest Holder's tax basis in its Interest. The Interest Holder's initial tax basis in the Equity Distribution Right will equal the fair market value of the Equity Distribution Right on the Effective Date, and the Interest Holder's holding period will begin on the date following the Effective Date.

Although not free from doubt, any payment made after the Effective Date to a former Interest Holder with respect to the Equity Distribution Right generally should be treated as a payment under a contract for the sale or exchange of such Interest Holder's Interest in Class 4 to which IRC section 483 applies. Under IRC section 483 and the applicable Treasury Regulations, a portion of the payment made with respect to the Equity Distribution Right will be treated as interest, which will be ordinary income to the former Interest Holder. The amount treated as interest will equal the excess of such payment over its present value on the Effective Date, calculated using the relevant applicable federal rate (the "AFR"). The AFR is a rate reflecting an average of market yields on Treasury debt obligations for different ranges of maturities that is published monthly by the IRS. The maturity range of the relevant AFR will correspond to the period from the Effective Date to the date the payment is made. Each Interest Holder must include IRC section 483 interest in income using such Interest Holder's regular method of accounting. The portion of any payment that is not treated as interest under IRC section 483 should reduce the former Interest Holder's tax basis in its Equity Distribution Right, and any amount in excess of such tax basis should constitute gain to the Interest Holder. If only one payment is made after the Effective Date with respect to the Equity Distribution Right and such payment is made within one year after the Effective Date, then IRC section 483 would not apply and no portion of such payment would be treated as interest under IRC section 483. In that event, the Interest Holder would recognize short-term capital gain or loss equal to the difference between the Interest Holder's tax basis in its Equity Distribution Right and the amount of such payment.

In the event that the Equity Distribution Right is treated as a debt instrument for federal income tax purposes, the tax treatment would be as described above except that, instead of including interest income at the time of payment under IRC section 483, an Interest Holder would be required to include currently an amount in income as interest (based on the yield of "comparable" debt instruments) in advance of the receipt of any cash payment, regardless of the Interest Holder's method of accounting.

C. Information Reporting and Backup Withholding.

In general, information reporting requirements may apply to distributions or payments under the Plan. Additionally, under the backup withholding rules, a Holder of a Claim or Interest may be subject to backup withholding (at a rate of 28% through December 31, 2010) with respect to distributions or payments made pursuant to the Plan unless that Holder: (a) comes within certain exempt categories (which generally include corporations) and, when required, demonstrates that fact; or (b) provides a correct taxpayer identification number and certifies under penalty of perjury that the taxpayer identification number is correct and that the Holder is not subject to backup withholding because of a failure to report all dividend and interest income. Backup withholding is not an additional tax but is, instead, an advance payment that may be refunded to the extent it results in an overpayment of tax; provided, however, that the required information is provided to the IRS.

The Debtor and the Post-Effective Date Debtor will withhold all amounts required by law to be withheld from distributions or payments and will comply with all applicable information reporting requirements.


THE FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN ARE COMPLEX. THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A PARTICULAR HOLDER IN LIGHT OF SUCH HOLDER'S CIRCUMSTANCES AND INCOME TAX SITUATION. ALL HOLDERS OF CLAIMS OR INTERESTS SHOULD CONSULT WITH THEIR TAX ADVISORS AS TO THE PARTICULAR TAX CONSEQUENCES TO THEM OF THE TRANSACTIONS CONTEMPLATED BY THE PLAN, INCLUDING THE APPLICABILITY AND EFFECT OF ANY STATE, LOCAL OR FOREIGN TAX LAWS AND OF ANY CHANGE IN APPLICABLE TAX LAWS.

VIII. CONCLUSION

It is the Debtor's belief and recommendation that the Plan fairly and equitably provides for the treatment of all Claims against and Interests in the Debtor.

IN WITNESS WHEREOF, the Proponent has executed this Disclosure Statement this 4th day of November, 2010.

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Exhibit A

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re:) Chapter 11
MIDDLEBROOK PHARMACEUTICALS, INC.,¹) Case No. 10-11485 (MFW)
Debtor.)
_____)

DEBTOR'S PLAN OF LIQUIDATION

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Dated: November 4, 2010

¹ The last four digits of the Debtor's taxpayer identification number are 8264. The Debtor's mailing address is 7 Village Circle, Suite 100, Westlake, Texas 76262.

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INTRODUCTION

MiddleBrook Pharmaceuticals, Inc. (the “Debtor”), proposes the following plan of liquidation for the resolution of the outstanding claims against and interests in the Debtor. Reference is made to the Disclosure Statement (as defined herein), distributed contemporaneously herewith, for a discussion of the Debtor’s history, business, properties and operations, risk factors, a summary and analysis of this Plan (as defined herein), and certain related matters. Subject to certain restrictions and requirements set forth herein and in 11 U.S.C. § 1127 and Fed. R. Bankr. P. 3019, the Debtor reserves the right to alter, amend, modify, revoke or withdraw this Plan prior to its substantial consummation in accordance with the terms hereof, the Confirmation Order (as defined herein), and the Bankruptcy Code (as defined herein).

ARTICLE I

DEFINED TERMS AND RULES OF INTERPRETATION

A. Defined Terms. As used herein, capitalized terms shall have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code, the Bankruptcy Rules or the Local Rules, shall have the meaning given to that term in the Bankruptcy Code, the Bankruptcy Rules or the Local Rules, as applicable.

1.1 Administrative Expense means an expense of the Debtor for costs and expenses of administration of the Bankruptcy Case (including, without limitation, expenses arising under Sections 327, 328, 330, 363, 364(c)(1), 365, 503(b), 507(a)(2) and 1114(e) of the Bankruptcy Code) including, without limitation, (a) any actual and necessary costs and expenses of preserving the Debtor’s Estate and operating the business of the Debtor; (b) all compensation for legal, financial, advisory, accounting and other services and reimbursement of expenses Allowed by the Bankruptcy Court under Sections 328, 330 or 503(b) of the Bankruptcy Code; (c) any indebtedness or obligations incurred or assumed by the Debtor, as debtor in possession, during the Bankruptcy Case; and (d) out-of-pocket expenses incurred by members of the Creditors’ Committee or Equity Committee (excluding any fees or expenses for legal or financial advisors except as otherwise provided herein). All fees and charges assessed against the Debtor’s Estate under Section 1930, Chapter 123, of Title 28 of the United States Code are excluded from the definition of Administrative Expense and shall be paid in accordance with Section 10.8 of the Plan.

1.2 Allowed means, with respect to a Claim, Administrative Expense or Interest against the Debtor, or any portion thereof, in any Class or category specified, (a) a Claim or Interest which has been listed by the Debtor in its Schedules, as may be amended by the Debtor from time to time, in accordance with Bankruptcy Rule 1009, as liquidated in amount and not disputed or contingent and for which no contrary assertion has been filed, (b) a Claim, Administrative Expense or Interest as to which no objection or request for estimation has been filed within the later of (i) sixty (60) days after the Effective Date or (ii) sixty (60) days after the filing of such Claim, Administrative Expense or Interest, subject to further extension by the Bankruptcy Court, or as to which any objection has been determined by a Final Order to the extent such objection is determined in favor of the respective Holder of such Claim or Interest; or (c) a Claim, Administrative Expense or Interest that is expressly allowed (i) by a Final Order, or

(ii) pursuant to the terms of this Plan; provided, however, that Claims or Interests allowed solely for the purpose of voting to accept or reject the Plan pursuant to an order of the Bankruptcy Court shall not be considered “Allowed” Claims or Interests hereunder.

1.3 Assets means any and all right, title, and interest of any of the Debtor in and to property of whatever type or nature.

1.4 Ballot means the forms distributed to each Holder of Impaired Claims, if any, entitled to vote on the Plan for the purposes of accepting or rejecting this Plan, as approved by the Bankruptcy Court.

1.5 Bankruptcy Case means the voluntary case commenced on April 30, 2010, by the Debtor in the Bankruptcy Court under Chapter 11 of the Bankruptcy Code.

1.6 Bankruptcy Code means Title 11 of the United States Code, as now in effect or hereafter amended, as applicable to the Bankruptcy Case.

1.7 Bankruptcy Court means the United States Bankruptcy Court for the District of Delaware or any other court with jurisdiction over the Bankruptcy Case.

1.8 Bankruptcy Rules means the Federal Rules of Bankruptcy Procedure as promulgated by the United States Supreme Court under Section 2075 of Title 28 of the United States Code, as now in effect or hereafter amended.

1.9 Business Day means any day other than a Saturday, a Sunday or “legal holiday” (as defined in Bankruptcy Rule 9006(a)).

1.10 Cash means legal tender of the United States of America.

1.11 Causes of Action means all claims, rights, causes of action, defenses, demands, damages, suits or proceedings of any kind or nature, whether under contract or tort, in law or in equity or otherwise, whether known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto, including causes of action arising under Chapter 5 of the Bankruptcy Code or similar state statutes, whether or not litigation has been commenced with respect to such action as of the Effective Date, that the Debtor, the Creditors’ Committee, the Equity Committee or the Estate may hold against any person or entity as of or following the Effective Date unless otherwise waived or released pursuant to this Plan.

1.12 Claim means a “claim”, as defined in Section 101(5) of the Bankruptcy Code.

1.13 Class means each category of Holders of Claims or Interests established under Article II of this Plan pursuant to Sections 1122 and 1123(a)(1) of the Bankruptcy Code.

1.14 Confirmation Date means the date on which the clerk of the Bankruptcy Court enters the Confirmation Order.

1.15 Confirmation Hearing means the hearing held by the Bankruptcy Court on confirmation of the Plan, as such hearing may be adjourned or continued from time to time.

1.16 Confirmation Order means the order of the Bankruptcy Court confirming this Plan pursuant to Section 1129 of the Bankruptcy Code.

1.17 Creditors' Committee means the Official Committee of Unsecured Creditors appointed and acting in the Bankruptcy Case, including all individual members thereof, and all professionals retained by the Creditors' Committee pursuant to an order of the Bankruptcy Court.

1.18 Debtor shall have the meaning set forth in the introduction to this Plan.

1.19 Disallowed means all or such part of a Claim, Administrative Expense or Interest that is disallowed by a Final Order of the Bankruptcy Court or other court of competent jurisdiction.

1.20 Disbursing Agent means any entity designated by the Plan Administrator as such.

1.21 Disclosure Statement means that certain disclosure statement relating to this Plan, including, without limitation, all exhibits and schedules thereto, as the same may be amended, supplemented or otherwise modified from time to time, as approved by the Bankruptcy Court pursuant to Section 1125 of the Bankruptcy Code.

1.22 Disputed Claim means any Claim against the Debtor, including any portion thereof (a) that is neither an Allowed Claim nor a Disallowed Claim or (b) for which a written request for payment has been made, to the extent the Debtor, the Plan Administrator or any party in interest has interposed a timely objection or request for estimation, which objection or request for estimation has not been withdrawn or determined by a Final Order. Any Class 3 Claim not listed on the Initial Allowed Class 3 Claim List shall be deemed a Disputed Claim.

1.23 Distribution means a distribution of the Debtor's Cash to the Record Holders of Allowed Claims or Allowed Interests, as set forth in Article VI of the Plan.

1.24 Distribution Record Date means, with respect to all Classes, the Effective Date or such other date as may be designated in the Confirmation Order.

1.25 DTC means The Depository Trust Company.

1.26 Effective Date means a Business Day on or after the Confirmation Date specified by the Debtor on which (i) no stay of the Confirmation Order is in effect, and (ii) the conditions to effectiveness of this Plan specified in Article VIII hereof have been satisfied or waived in accordance with the terms hereof.

1.27 Equity Committee means the Official Committee of Equity Security Holders appointed and acting in the Bankruptcy Case, including all individual members thereof, and all professionals retained by the Equity Committee pursuant to an order of the Bankruptcy Court.

1.28 Estate means the estate created in the Bankruptcy Case for the Debtor pursuant to Section 541 of the Bankruptcy Code.

1.29 Estate Assets means all Assets of the Estate, and the proceeds thereof, including, but not limited to, the Causes of Action.

1.30 Exhibit means an exhibit to this Plan or the Disclosure Statement, filed herewith or with the Disclosure Statement.

1.31 File, Filed or Filing means file, filed or filing with the Bankruptcy Court or its authorized designee in the Bankruptcy Case.

1.32 Final Distribution means the Distribution to the Record Holders of Allowed Class 4 Interests of the Debtor's remaining Cash, *pro rata* after having made any interim Distributions, and upon the completion of the liquidation of the Debtor's Assets, including the resolution of any Causes of Action.

1.33 Final Order means an order or judgment of the Bankruptcy Court (or other court of competent jurisdiction) entered by the clerk of the Bankruptcy Court on the docket in the Bankruptcy Case (or on the docket of any other court of competent jurisdiction), which has not been reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari or other proceedings for a new trial, reargument or rehearing shall then be pending, or (b) if an appeal, writ of certiorari, new trial, reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired; provided, however, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order shall not cause such order not to be a Final Order.

1.34 General Unsecured Claim means any Claim against the Debtor that is not an Administrative Expense, a Priority Tax Claim, a Priority Non-Tax Claim, or a Secured Claim, but shall not include Claims that are Disallowed, subordinated, recharacterized or released, whether by operation of law or pursuant to order of the Bankruptcy Court, written release or settlement, the provisions of this Plan or otherwise.

1.35 Governmental Unit means the United States, any State thereof, including, but not limited to, the State of Texas, any commonwealth, district, territory, municipality, foreign state, department, agency or instrumentality of a State, a commonwealth, district or territory or municipality of a foreign state or other foreign or domestic government.

1.36 Holder means an entity holding a Claim or Interest as of the Distribution Record Date.

1.37 Impaired means, with respect to any Class of Claims or Interests, "impaired" within the meaning of Section 1124 of the Bankruptcy Code.

1.38 Initial Allowed Class 3 Claim List means the list to be filed by the Debtor pursuant to Section 6.4 of this Plan no later than the Effective Date, which lists all Class 3 Claims to which the Debtor has no objection as of the Effective Date.

1.39 Initial Distribution Date means a date selected by the Plan Administrator that is not earlier than the Effective Date and not later than thirty (30) days after the Effective Date.

1.40 Interest means, without limitation, any equity security in the Debtor that is of a kind specified in Section 101(16) of the Bankruptcy Code and any options, warrants, puts, calls, registration rights, subscriptions or other similar rights or other agreements, commitments, or outstanding securities obligating the Debtor to issue, transfer, purchase, redeem, register or sell any shares of capital stock or other securities, any claims arising out of any appraisal or dissenter's rights, any claims arising from rescission of a purchase, sale or other acquisition of any common stock or other equity security (or any right, claim, or interest in and to any common stock or equity security) of the Debtor, any claims for damages or any other relief arising from any such purchase, sale, or other acquisition of such common stock or other equity security, and any claims or damages or any other relief arising from the failure to register or maintain the registration of any common stock or other equity security.

1.41 Interim Compensation Order means the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professional, entered by the Bankruptcy Court on June 3, 2010.

1.42 KCC means Kurtzman Carson Consultants LLC, in its capacity as the Debtor's claims, noticing and balloting agent.

1.43 Lien means, with respect to any interest in property, any mortgage, lien, pledge, charge, security interest, easement or encumbrance of any kind whatsoever affecting such interest in property to secure payment of a debt or performance of an obligation.

1.44 Liquidating Trust means, if the Debtor so elects, the trust established pursuant to this Plan to hold, liquidate and distribute the Estate Assets after the Effective Date.

1.45 Liquidating Trust Agreement means, if the Debtor so elects, the agreement to be executed pursuant to Section 5.6 of the Plan creating the Liquidating Trust and setting forth the rights, powers and duties of the Plan Administrator as the trustee of the Liquidating Trust.

1.46 Liquidating Trustee means the trustee of the Liquidating Trust (if the Liquidating Trust option is implemented); the initial trustee of the Liquidating Trust shall be the Plan Administrator, and in the event that the Liquidating Trust option is implemented, all references to the Plan Administrator in this Plan shall also be deemed to reference the Plan Administrator in his or her capacity as trustee of the Liquidating Trust.

1.47 Local Rules means the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, as amended from time to time.

1.48 MEIP means the MiddleBrook Employee Incentive Plan, approved by the Bankruptcy Court by order entered on July 12, 2010.

1.49 Noticing Agent Website means the website located at <http://www.kccllc.net/MiddleBrook>.

1.50 Pension and Retirement Plans means the Debtor's defined contribution plan, or any similar pension or retirement plan related to the employees of the Debtor.

1.51 Person means an individual, corporation, partnership, joint venture, association, joint stock company, limited liability company, limited liability partnership, trust, estate, unincorporated organization, governmental unit (as defined in Section 101(27) of the Bankruptcy Code, or other entity.

1.52 Petition Date means April 30, 2010, the date on which the Debtor commenced the Bankruptcy Case.

1.53 Plan means this Chapter 11 plan of liquidation, including the Plan Supplement, the Exhibits, and all supplements, appendices and schedules thereto, either in its present form or as the same may be altered, amended or modified from time to time in accordance with the provisions of the Bankruptcy Code and the terms hereof.

1.54 Plan Administrator means the person to be appointed to administer the Plan and the provisions thereof in the manner provided in the Plan, and, if implemented, shall serve as the trustee of the Liquidating Trust.

1.55 Plan Administrator Agreement means the agreement to be executed pursuant to Section 5.6 of the Plan setting forth the rights, powers and duties of the Plan Administrator to carry out the terms of the Plan and wind down the Debtor's Estate, and, if implemented, to serve as the trustee of the Liquidating Trust.

1.56 Plan Committee means, if implemented, the committee to be appointed to oversee the Plan Administrator's administration of the Plan, in the manner provided in the Plan or the Plan Supplement.

1.57 Plan Committee Agreement means that certain agreement by and among the Debtor and each member of the Plan Committee that shall set forth the governance of the post-confirmation actions of the Plan Administrator and the Plan Committee, if the Plan Committee option is implemented.

1.58 Plan Documents means the documents to be executed, delivered, assumed, and/or performed in conjunction with the consummation of the Plan on or about the Effective Date.

1.59 Plan Supplement means the Plan Administrator Agreement, the designation of the person to serve as the initial Plan Administrator, the Liquidating Trust Agreement (if implemented), the Plan Committee Agreement (if implemented), and the designation of the persons to serve as the initial Plan Committee members, and any other relevant documents or agreements.

1.60 Plan Supplement Filing Deadline means the date which is five (5) Business Days prior to the date set for objecting to the Plan.

1.61 Post-Effective Date Debtor means the Debtor, from and after the occurrence of the Effective Date; provided, however, that in the event that the Liquidating Trust option is implemented, all references to the Post-Effective Date Debtor shall be deemed to reference the Liquidating Trust or the Liquidating Trustee, as applicable.

1.62 Priority Non-Tax Claim means any Claim against the Debtor, other than an Administrative Expense or a Priority Tax Claim, entitled to priority in payment as specified in Section 507(a) of the Bankruptcy Code.

1.63 Priority Tax Claim means any Claim against the Debtor of a Governmental Unit of the kind entitled to priority in payment as specified in Sections 502(i) and 507(a)(8) of the Bankruptcy Code.

1.64 Pro Rata means, with respect to a Claim or Interest, that proportion that a Claim or Interest in a particular Class bears to the aggregate amount of all Claims or Interests in such Class, except in cases where Pro Rata is used in reference to multiple Classes in which case, Pro Rata means the proportion that a Claim or Interest in a particular Class bears to the aggregate amount of all Claims in such multiple Classes.

1.65 Record Date means such date as the Court designates in any Order approving voting procedures and the mailing of the Disclosure Statement and Plan to Holders of Claims and Interests.

1.66 Record Holder means the Holder of a Claim or Interest as of the Record Date.

1.67 Reinstated or Reinstatement means (a) leaving unaltered the legal, equitable and contractual rights to which a Claim entitles the Holder of such Claim so as to leave such Claim Unimpaired, or (b) notwithstanding any contractual provision or applicable law that entitles the Holder of such Claim to demand or receive accelerated payment of such Claim after the occurrence of a default, (i) curing any such default that occurred before or after the Petition Date, other than a default of a kind specified in Section 365(b)(2) of the Bankruptcy Code; (ii) reinstating the maturity (to the extent such maturity has not otherwise accrued by the passage of time) of such Claim as such maturity existed before such default; (iii) compensating the Holder of such Claim for any damages incurred as a result of any reasonable reliance by such Holder on such contractual provision or such applicable law; (iv) if such Claim arises from any failure to perform a nonmonetary obligation other than a default arising from failure to operate a nonresidential real property lease subject to Section 365(b)(1)(A) of the Bankruptcy Code, compensating the Holder of such Claim (other than the debtor or an insider) for any actual pecuniary loss incurred by such Holder as a result of such failure; and (v) not otherwise altering the legal, equitable or contractual rights to which such Claim entitles the Holder of such Claim. The Debtor reserves its legal, equitable and contractual rights and defenses to dispute the liability and/or the amount of any Reinstated Claim.

1.68 Released Parties means (i) the Debtor, (ii) the present and former members of the Debtor's Board of Directors who were serving in such capacity on or after the Petition Date, (iii) the present and former officers and employees of the Debtor who were serving in such capacity on or after the Petition Date, (iv) the Creditors' Committee and the Equity Committee and its

past and present members (but only in their capacity as members of the Creditors' Committee or the Equity Committee), and (v) any attorneys, financial advisors, investment bankers, accountants, consultants, or other professionals of the parties described in clauses (i) through (iv) hereof; provided, however, that such Released Parties shall only include those that provided services related to the Debtor, the Bankruptcy Case, the Plan, or the transactions contemplated by this Plan.

1.69 Schedules means the schedules of assets and liabilities and the statement of financial affairs filed by the Debtor pursuant to Section 521 of the Bankruptcy Code, Bankruptcy Rule 1007, and the Official Bankruptcy Forms of the Bankruptcy Rules, as such schedules and statements have been or may be supplemented or amended through the Confirmation Date.

1.70 Secured Claim means, pursuant to Section 506 of the Bankruptcy Code, that portion of a Claim against the Debtor that is reflected in the Schedules or a proof of claim as a Secured Claim which is (a) secured by a valid, perfected and enforceable security interest, lien, mortgage or other encumbrance, that is not subject to avoidance under applicable bankruptcy or non-bankruptcy law, in or upon any right, title or interest of the Debtor in and to property of the Estate, to the extent of the value of the Holder's interest in such property as of the relevant determination date or (b) Allowed as such pursuant to the terms of this Plan (subject to the occurrence of the Effective Date). The defined term Secured Claim includes any Claim against the Debtor that is subject to a permissible setoff under Section 553 of the Bankruptcy Code, to the extent of such permissible setoff.

1.71 Subsequent Distribution Date means a date selected by the Plan Administrator, in his or her discretion and in accordance with the provisions of this Plan, that is, except as set forth otherwise in Section 6.4 of this Plan, (a) with respect to Distributions to Allowed Claims, not later than sixty (60) days, and with respect to Distributions to Allowed Interests, not earlier than ninety (90) days, after the date on which the previous Distribution was made to Holders of Allowed Claims and/or Interests, and (b) on which date the Plan Administrator determines that there is at least five hundred thousand dollars (\$500,000) available to distribute to Holders of Allowed Claims or sufficient Cash available to pay all Allowed Claims then extant in full, whichever is less, or at least three million dollars (\$3,000,000) available to distribute to Holders of Allowed Interests or such other amount constituting a Final Distribution, whichever is less.

1.72 Unimpaired means, with respect to a Claim or Interest, that such Claim or Interest is not Impaired within the meaning of Section 1124 of the Bankruptcy Code as a result of being either (a) Reinstated or (b) paid in full and in Cash on or after the Effective Date pursuant to the terms of this Plan or any order of the Bankruptcy Court.

B. Rules of Interpretation. For purposes of this Plan, unless otherwise provided herein: (a) whenever from the context it is appropriate, each term, whether stated in the singular or the plural, will include both the singular and the plural; (b) unless otherwise provided in this Plan, any reference in this Plan to a contract, instrument, release, or other agreement or document being in a particular form or on particular terms and conditions means that such document will be substantially in such form or substantially on such terms and conditions; (c) any reference in this Plan to an existing document, schedule or exhibit Filed or to be Filed means such document, schedule, or exhibit, as it may have been or may be amended, modified, or supplemented

pursuant to this Plan; (d) any reference to an entity as a Holder of a Claim or Interest includes that entity's successors and assigns; (e) the words "herein," "hereof," "hereto," "hereunder" and other words of similar import refer to this Plan as a whole and not to any particular section, subsection or clause contained in this Plan; (f) captions and headings to Articles and Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Plan; (g) subject to the provisions of any contract, certificates or articles of incorporation, by-laws, instruments, releases, or other agreements or documents entered into in connection with this Plan, the rights and obligations arising under this Plan shall be governed by, and construed and enforced in accordance with, federal law, including the Bankruptcy Code, the Bankruptcy Rules and the Local Rules; (h) the rules of construction set forth in Section 102 of the Bankruptcy Code will apply; and (i) in computing any period of time prescribed or allowed by this Plan, the provision of Bankruptcy Rule 9006(a), as then in effect, will apply.

C. Exhibits and Plan Supplement. All Exhibits and the Plan Supplement are incorporated into and are a part of this Plan as if set forth in full herein, and, to the extent not annexed hereto, such Exhibits or Plan Supplement shall be timely Filed in accordance with this Plan. Holders of Claims and Interests may obtain a copy of the Filed Exhibits upon written request to the Debtor. Upon their Filing, the Exhibits may be inspected in the office of the clerk of the Bankruptcy Court or its designee during normal business hours. The documents contained in the Exhibits and the Plan Supplement shall be approved by the Bankruptcy Court pursuant to the Confirmation Order. The Debtor shall file the Plan Supplement by the Plan Supplement Filing Deadline.

ARTICLE II

CLASSIFICATION OF CLAIMS AND INTERESTS

All Claims and Interests, except Administrative Expenses and Priority Tax Claims, are placed in the Classes set forth below. In accordance with Section 1123(a)(1) of the Bankruptcy Code, Administrative Expenses and Priority Tax Claims, as described below, have not been classified.

A Claim or Interest is placed in a particular Class only to the extent that the Claim or Interest qualifies within the description of such Class and is in a different Class to the extent that it qualifies within the description of such different Class, but the same portion of a Claim may not be in more than one Class. A Claim or Interest is also placed in a particular Class for all purposes, including voting, confirmation and Distribution under this Plan and under Sections 1122 and 1123(a)(1) of the Bankruptcy Code. However, a Claim or Interest is placed in a particular Class for the purpose of receiving Distributions pursuant to this Plan only to the extent that such Claim or Interest is an Allowed Claim or Interest in that Class and such Claim or Interest has not been paid, released or otherwise settled prior to the Effective Date.

2.1 Unclassified Claims. The following Claims are Unimpaired under this Plan.

- (a) Administrative Expenses.
- (b) Priority Tax Claims.

2.2 Classes of Claims and Interests.

- (a) Class 1: Priority Non-Tax Claims. Class 1 consists of all Priority Non-Tax Claims against the Debtor. Claims in Class 1 are Unimpaired. Holders of Claims in Class 1 will be deemed to accept the Plan and are not entitled to vote to accept or reject the Plan.
- (b) Class 2: Secured Claims. Class 2 consists of all Secured Claims against the Debtor. Claims in Class 2 are Unimpaired. Holders of Claims in Class 2 will be deemed to accept the Plan and are not entitled to vote to accept or reject the Plan.
- (c) Class 3: General Unsecured Claims. Class 3 consists of all General Unsecured Claims against the Debtor. Claims in Class 3 are Unimpaired. Holders of Claims in Class 3 will be deemed to accept the Plan and are not entitled to vote to accept or reject the Plan.
- (d) Class 4: Interests. Class 4 consists of all Interests and all Claims arising out of or relating thereto. Interests in Class 4 are either Unimpaired, and therefore deemed to accept the Plan, or are Impaired and shall be deemed to reject the Plan. Accordingly, holders of Interests in Class 4 are not entitled to vote to accept or reject the Plan.

ARTICLE III

TREATMENT OF CLAIMS AND INTERESTS

3.1 Unclassified Claims.

- (a) Administrative Expenses. Unless otherwise agreed by the Holder of an Administrative Expense, in full satisfaction, settlement, release, and discharge of and in exchange for each Administrative Expense, each Holder of an Allowed Administrative Expense will receive payment in full and in Cash of any unpaid portion of such Allowed Administrative Expense as follows:
 - (i) in the case of professional advisors, subject to the provisions of Sections 328, 330, 331 and 503(b) of the Bankruptcy Code, the Interim Compensation Order and Article XI of this Plan, as soon as practicable after final Bankruptcy Court approval thereof; and
 - (ii) with respect to each other Allowed Administrative Expense, on the later of (x) the date on which such claims become due in the ordinary course of business and in accordance with the terms and conditions of the particular agreements governing such obligations, and (y) on or as shortly after the Effective Date as is practicable; or (z) such other date as may be agreed upon between the Holder of

such Administrative Expense and the Debtor or the Plan Administrator, or as provided for in a Final Order.

- (b) Priority Tax Claims. Unless otherwise agreed by the Holder of a Priority Tax Claim, in full satisfaction, settlement, release, and discharge of and in exchange for each Priority Tax Claim, each Holder of an Allowed Priority Tax Claim shall receive in full satisfaction, settlement and release of and in exchange for such Priority Tax Claim, at the election of the Plan Administrator: (x) Cash equal to the amount of such Priority Tax Claim on or as shortly after the Effective Date as is practicable; (y) such other treatment as to which the Debtor or the Plan Administrator and the Holder of such Priority Tax Claim shall have agreed upon in writing; or (z) such other treatment as will cause such Claims not to be Impaired, including, but not limited to, payment as set forth in Section 1129(a)(9)(C) of the Bankruptcy Code; provided, however, that any Priority Tax Claim not due and owing on the Effective Date will be paid when such Claim becomes due and owing.

3.2 Classes of Claims and Interests. Unless the Holder of a Claim or Interest and the Debtor or the Plan Administrator agree to a different treatment, each Holder of a Claim or Interest shall receive as follows:

- (a) Class 1: Priority Non-Tax Claims. In full satisfaction, settlement, release, and discharge of and in exchange for each Priority Non-Tax Claim, in the ordinary course of business as such claims become due, or, if due now, on or as shortly after the Effective Date as is practicable, each Holder of an Allowed Priority Non-Tax Claim as of the Distribution Record Date shall receive in full satisfaction, settlement and release of and in exchange for such Priority Non-Tax Claim, at the election of the Debtor or the Plan Administrator: (i) Cash equal to the amount of such Priority Non-Tax Claim; (ii) such other treatment as to which the Debtor or the Plan Administrator and the Holder of such Priority Non-Tax Claim shall have agreed upon in writing; or (iii) such other treatment as will cause such Claims not to be Impaired; provided, however, that any Priority Non-Tax Claim not due and owing on the Effective Date will be paid when such Claim becomes due and owing.
- (b) Class 2: Secured Claims. In full satisfaction, settlement, release, and discharge of and in exchange for each Secured Claim, if any, each Holder of an Allowed Secured Claim as of the Distribution Record Date, if any, shall, at the election of the Debtor or the Plan Administrator, have its Claim Reinstated or satisfied in Cash, in full, on the Effective Date.
- (c) Class 3: General Unsecured Claims. In full satisfaction, settlement, release, and discharge of and in exchange for each General Unsecured Claim, each Holder of an Allowed General Unsecured Claim as of the Distribution Record Date shall receive one hundred percent (100%) of

such Allowed General Unsecured Claim, plus such interest as may be legally allowable on such Claim at the non-default contractual rate, or, if no contractual rate is stated, then at the federal judgment rate then prevailing, accruing from the Petition Date to the Effective Date, in Cash (to the extent unpaid prior to the Effective Date). Notwithstanding any provision in the Plan to the contrary, to the extent and only to the extent a General Unsecured Claim is subordinated under applicable law, including but not limited to, Sections 510(a), (b) or (c) of the Bankruptcy Code or recharacterized under applicable law, including but not limited to, Section 105 of the Bankruptcy Code, any distributions on account of such General Unsecured Claim shall be made as provided in the Bankruptcy Court order regarding such Claim.

- (d) Class 4: Interests. Upon any Distribution or Subsequent Distribution Date and subject to and upon the payment in full (or the establishment of appropriate reserves for payment in full) of all Allowed Claims then existing, plus such interest provided for in this Plan, and after making appropriate reserves for Disputed Claims as set forth in Article VI of the Plan, as well as for ongoing expenses of administration of the Estate, in full satisfaction, settlement, release, and discharge of and in exchange for each Interest, each Holder of an Allowed Interest as of the Distribution Record Date shall receive a Pro Rata share of the remaining Cash in the Estate, if any.

3.3 Special Provision Regarding Unimpaired Claims. Except as otherwise explicitly provided in this Plan, nothing shall affect, diminish or impair the Debtor's rights and defenses, both legal and equitable, with respect to any Unimpaired Claims, including, but not limited to, legal and equitable defenses to setoffs or recoupment against Unimpaired Claims, or recharacterization of Unimpaired Claims.

ARTICLE IV

ACCEPTANCE OR REJECTION OF THE PLAN

4.1 Acceptance by an Impaired Class. In accordance with Section 1126(c) of the Bankruptcy Code and except as provided in Section 1126(e) of the Bankruptcy Code, an Impaired Class of Claims shall have accepted this Plan if this Plan is accepted by the Holders of at least two-thirds (2/3) in dollar amount and more than one-half (1/2) in number of the Claims of such Class that have timely and properly voted to accept or reject this Plan. Unless the Bankruptcy Court determines otherwise, there are no Impaired Classes.

4.2 Presumed Acceptances or Rejections by Various Classes. Classes 1, 2 and 3 are Unimpaired by this Plan. Under Section 1126(f) of the Bankruptcy Code, Holders of such Claims are conclusively presumed to accept this Plan, and thus the votes of the Holders of such Claims will not be solicited. Class 4 is either Unimpaired by this Plan (in the event that such Class receives a Distribution of the residual Cash in the Estate), or Class 4 is Impaired by this Plan (in the event that the Bankruptcy Court so determines). Therefore, either (a) under Section

1126(f) of the Bankruptcy Code, Holders of such Interests are conclusively presumed to accept this Plan, or (b) under Section 1126(g) of the Bankruptcy Code, Holders of such Interests are deemed to reject this Plan. Accordingly, the votes of the Holders of such Interests will not be solicited.

4.3 Summary of Classes Voting on this Plan. As a result of the provisions of Sections 3.1 and 3.2 of this Plan, and unless the Bankruptcy Court determines otherwise, no votes of Holders of Claims or Interests shall be solicited with respect to this Plan.

4.4 Confirmation Pursuant to Section 1129(a) of the Bankruptcy Code. If all Classes have either accepted the Plan, been deemed to have accepted the Plan or are not entitled to vote, the Debtor shall request the Bankruptcy Court to confirm the Plan under Section 1129(a) of the Bankruptcy Code.

4.5 Non-Consensual Confirmation. In the event that it is determined that one or more Impaired Classes of Claims or Interests exist, and if any Impaired Class fails to accept this Plan by the requisite statutory majorities, the Debtor reserves the right (i) to confirm this Plan by a “cram-down” of such non-accepting Class pursuant to Section 1129(b) of the Bankruptcy Code and (ii) to propose any modifications to this Plan and to confirm this Plan as modified, without re-solicitation, to the extent permitted by the Bankruptcy Code.

ARTICLE V

MEANS FOR IMPLEMENTATION OF THE PLAN

5.1 Bar Date for Administrative Expenses. Except as may otherwise be provided by separate order of the Bankruptcy Court, and other than professional fee claims, any Holder of an Administrative Expense that has not been paid, released, or otherwise settled prior to the Effective Date, must file any request for payment of the Administrative Expense on or before the date that is thirty (30) days after the Effective Date. Any request for payment of an Administrative Expense that is not timely filed as set forth herein will be forever barred and Disallowed by operation of confirmation of this Plan and without the need for any party to file any objection or other pleading, and Holders of such Administrative Expenses shall be prohibited from asserting such Administrative Expenses in any manner against the Debtor, the Post-Effective Date Debtor, the Liquidating Trust, or the Plan Administrator.

5.2 Cancellation of Claims and Interests. Except as otherwise set forth in this Plan, and except for purposes of evidencing a right to a Distribution, on the Effective Date, (a) all agreements and other documents evidencing the Claims or rights of any Holders of such Claims against the Debtor, including, but not limited to, all contracts, notes, guarantees, and mortgages, and (b) all Interests, shall be canceled. Thereafter, one share of stock in the Debtor shall be issued to the Plan Administrator.

5.3 Revesting of Estate Assets. Notwithstanding Section 1141(b) of the Bankruptcy Code, except as otherwise provided for in this Plan, the Estate Assets, including Causes of Action, shall not revert in the Debtor or the Post-Effective Date Debtor, but shall remain property of the Estate subject to the jurisdiction of the Bankruptcy Court, or, if the Liquidating

Trust option is implemented, such Estate Assets shall be transferred to the Liquidating Trust, but in either case under the exclusive control of the Plan Administrator, until liquidated and distributed to Holders of Allowed Claims and Interests in accordance with the provisions of this Plan and the Confirmation Order.

5.4 Preservation and Retention of Causes of Action, Defenses of the Debtor, and Rights to Object to Claims. Confirmation of this Plan will have no impact upon, and will not render *res judicata* any: (i) Causes of Action other than those Causes of Action released under this Plan or the Confirmation Order, (ii) any defenses the Debtor may have (including rights of setoff) in any action brought against it; or (iii) any party's right to object to any Claim against the Debtor, subject to any limitation expressly set forth in this Plan.

5.5 Effective Date. The Plan shall become effective on the date which is the first Business Day on which each condition set forth in Article VIII of the Plan has been satisfied or waived as set forth therein.

5.6 The Plan Administrator. Prior to the Confirmation Date, the Debtor, in consultation with the Creditors' Committee and the Equity Committee, will designate a person or entity to serve as the Plan Administrator. The Plan Administrator will be appointed on the Effective Date pursuant to the terms of the Plan, and will enter into the Plan Administrator Agreement in a form reasonably acceptable to the Debtor, after consultation with the Creditors' Committee and the Equity Committee, and, if such option is implemented, shall enter into the Liquidating Trust Agreement in a form reasonably acceptable to the Debtor, after consultation with the Creditors' Committee and the Equity Committee. Subject to the terms of the Plan Administrator Agreement and, if implemented, the Liquidating Trust Agreement, the Plan Administrator shall obtain a bond or other insurance, to be paid from the Estate Assets, for the Plan Administrator, or any employees, agents, representatives, or independent contractors employed by the Plan Administrator or the Post-Effective Date Debtor, including, without limitation, any tail coverage or other similar coverage.

5.7. Limitations on Liability. The Plan Administrator will not incur liability to any person by reason of discharge of the Plan Administrator's duties as set forth in this Plan and in the Plan Administrator Agreement and, if implemented, the Liquidating Trust Agreement, except in the event of gross negligence, willful misconduct or intentional fraud by the Plan Administrator.

5.8 Rights, Powers, and Duties of the Post-Effective Date Debtor and the Plan Administrator. The Post-Effective Date Debtor will retain and have all of the rights, powers, and duties necessary to carry out its responsibilities under this Plan, under the exclusive control and direction of the Plan Administrator. Additionally, the Plan Administrator may bring or otherwise pursue all claims and Causes of Action on behalf of the Debtor, the Post-Effective Date Debtor, the Estate and, if implemented, the Liquidating Trust, that could otherwise be brought by a trustee or an examiner appointed under the Bankruptcy Code, that are not otherwise released by this Plan or the Confirmation Order. Without limiting the generality of the foregoing, and except as otherwise set forth in this Article V, the Plan Administrator's rights, powers, and duties include, but are not limited to:

- (a) liquidation of the Estate Assets, including Causes of Action, and any assets of the Post-Effective Date Debtor and, if implemented, the Liquidating Trust;
- (b) investment of Cash of the Estate and, if implemented, the Liquidating Trust, in various reserve accounts and maintenance of the same;
- (c) calculating and paying Distributions in accordance with the terms of this Plan or as otherwise ordered by the Bankruptcy Court to Holders of Allowed Claims and Interests;
- (d) employing, supervising, and compensating professionals retained to represent the interests of the Post-Effective Date Debtor and, if implemented, the Liquidating Trust;
- (e) making and filing tax returns for the Post-Effective Date Debtor and, if implemented, the Liquidating Trust, as may be required;
- (f) subject to the terms of this Plan, objecting to or seeking the subordination or recharacterization of Claims filed against the Debtor or the Estate or as set forth in the Schedules, except for Claims that have been previously Allowed by Final Order or pursuant to Section 6.4 of the Plan;
- (g) seeking the estimation of contingent or unliquidated Claims filed against the Debtor, the Post-Effective Date Debtor, or the Estate pursuant to Section 502(c) of the Bankruptcy Code;
- (h) seeking determination of tax liability for the Debtor the Post-Effective Date Debtor or, if implemented, the Liquidating Trust, under Section 505 of the Bankruptcy Code;
- (i) filing, prosecuting, settling or otherwise resolving the remaining Causes of Action on behalf of the Debtor, the Post-Effective Date Debtor or, if implemented, the Liquidating Trust;
- (j) seeking permission to destroy the Debtor's books and records and/or abandonment of any remaining assets that have *de minimis* value to the Estate;
- (k) closing the Bankruptcy Case;
- (l) dissolving and winding up the Debtor or the Post-Effective Date Debtor, as applicable;
- (m) exercising all powers and rights, and taking all actions contemplated by or provided for in this Plan.

5.9 Compensation of the Plan Administrator. The Plan Administrator and its professionals will be compensated from the Estate Assets subject to the terms of the Plan Administrator Agreement, as approved by the Bankruptcy Court.

5.10 Successor Plan Administrator. Should the Plan Administrator initially appointed pursuant to the terms of the Plan become unable or unwilling to continue in such role, then, if the Plan Committee option has been implemented, the Plan Committee shall select a successor. If the Plan Committee option has not been implemented, then any party in interest may notify the U.S. Trustee's Office, and the U.S. Trustee shall select a successor, subject to approval of the Bankruptcy Court. Alternatively, any party in interest may move the Bankruptcy Court to appoint a successor. Once approved by the Bankruptcy Court, such successor shall become the Plan Administrator for all purposes, and shall have all the rights and powers of the Plan Administrator as set forth in this Plan.

5.11 Continued Corporate Existence. Except in the event that the Liquidating Trust option is implemented, the Debtor shall continue in existence as the Post-Effective Date Debtor pursuant to the terms of its certificate of incorporation, by-laws, and other corporate governance documents, as the same were in effect prior to the Effective Date, except that on or as soon as practicable after the Effective Date, the certificate of incorporation of the Post-Effective Date Debtor will be restated to, among other things, (i) authorize the issuance of one share of new common stock, \$0.01 par value per share to be held by the Plan Administrator in accordance with the terms of this Plan, (ii) prohibit the issuance of non-voting equity securities, and (iii) limit the activities of the Post-Effective Date Debtor to matters related to the implementation of this Plan and to matters reasonably incidental thereto. If the Liquidating Trust option is implemented, then the Estate Assets shall be transferred to the Liquidating Trust as set forth in Section 5.3 of this Plan and the Debtor shall dissolve or otherwise terminate its existence following the Effective Date.

5.12 Directors of the Debtor. On the Effective Date, the Plan Administrator will succeed to all of the rights and powers of the directors of the Debtor and such directors will be deemed to have resigned on the Effective Date.

5.13 Liquidating Trust Option. The Debtor, in consultation with the Creditors' Committee and the Equity Committee, may elect to create the Liquidating Trust to hold, liquidate, and distribute the Estate Assets. In such event, the Plan Administrator shall also serve as the Liquidating Trustee pursuant to the terms of the Liquidating Trust Agreement. If such option is elected, the Debtor shall so specify in the Plan Supplement.

5.14 Plan Committee Option. The Debtor, in consultation with the Creditors' Committee and the Equity Committee, may elect to implement the Plan Committee to oversee the Plan Administrator in the performance of his or her duties. If such option is elected, the Debtor shall so specify in the Plan Supplement. In such event, the Plan Committee will be appointed on the Effective Date and shall consist of (i) one member designated by the Debtor; and (ii) one member designated by the Equity Committee representing the Holders of Interests; and (iii) one member designated by the Creditors' Committee, except that the member designated by the Creditors' Committee may not be a creditor holding a Disputed Claim. Each member selected to serve on the Plan Committee shall be a business person, not an attorney or

other retained professional. The members of the Plan Committee shall serve without compensation for their performance of services as members of the Plan Committee. The Plan Committee shall be governed by the Plan Committee Agreement. The Plan Committee's rights, powers and duties are limited to those set forth in the Plan Committee Agreement.

ARTICLE VI

PROVISIONS GOVERNING DISTRIBUTIONS

6.1 Payment of Administrative Expenses. The Plan Administrator shall pay Allowed Administrative Expenses in full, without interest, in Cash, on or as soon as practicable after the later of (a) the date on which such Allowed Administrative Expense becomes due in the ordinary course of business and in accordance with the terms and conditions of the particular agreement(s) governing such obligation, (b) the Effective Date, or (c) the date that is ten (10) Business Days after the Administrative Expense becomes an Allowed Administrative Expense; or (d) at such other time and in such other manner as may be agreed upon in writing between the Holder of the Allowed Administrative Expense and the Plan Administrator.

6.2 Payment of Allowed Priority Tax Claims. The Plan Administrator shall pay Allowed Priority Tax Claims in full, in Cash, on or as soon as practicable after the later of (a) the Effective Date, (b) the date that is ten (10) Business Days after the Claim becomes an Allowed Priority Tax Claim, or (c) such other payment schedule as will cause such Claim not to be Impaired, including, but not limited to, payment as set forth in Section 1129(a)(9)(C) of the Bankruptcy Code; or (d) at such other time and in such other manner as may be agreed upon in writing between the Holder of the Allowed Priority Tax Claim and the Plan Administrator; provided, however, that any Priority Tax Claim not due and owing on the Effective Date will be paid when such Claim becomes due and owing.

6.3 Distribution to Holders of Class 1 and 2 Claims. The Plan Administrator shall pay Allowed Class 1 and Allowed Class 2 Claims (unless any such Allowed Class 2 Claim is Reinstated) in full, without interest, in Cash, on or as soon as practicable after the later of (a) the date on which such Allowed Claim becomes due in the ordinary course of business and in accordance with the terms and conditions of the particular agreement(s) governing such obligation, (b) the Effective Date, or (c) the date that is ten (10) Business Days after the Claim becomes an Allowed Claim; or (d) at such other time and in such other manner as may be agreed upon in writing between the Holder of the Allowed Claim and the Plan Administrator.

6.4 Distribution to Holders of Class 3 Claims. On or by the Effective Date, the Debtor shall file the Initial Allowed Class 3 Claim List. If no objection is filed to any Claim listed on the Initial Allowed Class 3 Claim List within twenty (20) days after the Effective Date, such Claim shall be conclusively deemed Allowed without any further action of the Debtor, the Plan Administrator, the Court, or any party. On or by the Initial Distribution Date, the Plan Administrator shall make a Distribution to each Holder of an Allowed Class 3 Claim listed on the Initial Allowed Class 3 Claim List to which no objection has been filed by distributing Cash to each such Holder of such Allowed Class 3 Claim as of the Distribution Record Date, sufficient to pay such Holder's Allowed Class 3 Claim in full pursuant to and in accordance with the terms of Section 3.2(c) of this Plan. Thereafter, no later than ten (10) Business Days after the date on

which any other Class 3 Claim becomes an Allowed Class 3 Claim, the Plan Administrator shall make a Distribution to the Holder of such Allowed Class 3 Claim by distributing Cash to the Holder of such Allowed Class 3 Claim as of the Distribution Record Date, sufficient to pay such Holder's Allowed Class 3 Claim in full pursuant to and in accordance with the terms of Section 3.2(c) of this Plan.

6.5 Distribution to Holders of Class 4 Interests. The Plan Administrator shall make one or more Distributions to Holders of Allowed Interests as of the Distribution Record Date, pursuant to and in accordance with the terms of Section 3.2(d) of this Plan. The Plan Administrator may make interim Distributions to Holders of Allowed Interests at his or her discretion, but shall make a Distribution to Holders of Allowed Interests any time the balance of Cash available for Distribution exceeds three million dollars (\$3,000,000) and if the other provisions of this Plan are satisfied. If a Distribution to a Holder of an Allowed Class 4 Interest would be less than \$100, such Distribution shall be held until the Final Distribution. Notwithstanding anything to the contrary, prior to making any Distributions to Holders of Interests, the Plan Administrator shall first reserve for amounts due under, or which may be due under, the MEIP.

6.6 Liquidating Trust Distributions. In the event that the Liquidating Trust option is elected, the Plan Administrator or the Disbursing Agent, on behalf of the Liquidating Trust and in accordance with the Liquidating Trust Agreement, shall make Distributions to Holders of Allowed Claims and Interests in the same manner and priority as would be required under this Plan if the Liquidating Trust option had not been implemented.

6.7 Final Distribution. Upon the completion of the liquidation of the Debtor's, the Post-Effective Date Debtor's and the Estate's assets, including the resolution of any Causes of Action, and resolution of all objections to Claims, the Plan Administrator shall make the Final Distribution by distributing the Cash remaining in the Estate Pro Rata to the Holders of Allowed Class 4 Interests (but only after all Allowed Claims have been paid in full pursuant to the terms of this Plan) as of the Distribution Record Date. If the Final Distribution to a Holder of an Allowed Class 4 Interest would be less than \$10.00, no Distribution to such Holder shall be made. If after making the Final Distribution, and after payment of all fees and expenses, including all outstanding U.S. Trustee fees, the Estate has any remaining Cash, and the amount of such Cash is less than \$50,000, such Cash shall be donated to a charity of the Plan Administrator's choosing.

6.8 Delivery of Distributions. The Distributions shall be made to Holders of Allowed Claims and Allowed Interests as of the Distribution Record Date: (i) at the address set forth on the proof of claim Filed by a Holder of an Allowed Claim or the address of record for the Holder of an Allowed Interest, (ii) at the address set forth in any written notices of address change Filed by such Holder, (iii) at the addresses reflected in the Schedules if neither a proof of claim or interest nor a written notice of address change has been Filed, or (iv) if the Holder's address is not listed in the Schedules, at the last known address of such Holder according to the Debtor's books and records.

6.9 Distributions by Disbursing Agent. Other than as specifically set forth in this Plan, the Disbursing Agent, if appointed, shall make all Distributions required to be made under this Plan.

6.10 Undeliverable and Unclaimed Distributions.

- (a) Holding and Investment of Undeliverable and Unclaimed Distributions. If the Distribution to any Holder of a Claim or Interest is returned to the Post-Effective Date Debtor, the Plan Administrator or the Disbursing Agent as undeliverable or is otherwise unclaimed, no further Distributions shall be made to such Holder unless and until the Plan Administrator or the Disbursing Agent is notified in writing of such Holder's then current address.
- (b) Failure to Claim Undeliverable Distributions. Any Holder of a Claim or Interest that does not assert a claim pursuant to this Plan for an undeliverable or unclaimed Distribution within one (1) year after the Effective Date shall be deemed to have forfeited its claim for such undeliverable or unclaimed Distribution and shall be forever barred and enjoined from asserting any such claim for an undeliverable or unclaimed Distribution against the Debtor, the Post-Effective Date Debtor, or the Estate or their property. In such cases, any Cash for Distribution on account of such claims for undeliverable or unclaimed Distributions shall become the property of the Estate free of any restrictions thereon and notwithstanding any federal or state escheat laws to the contrary. Nothing contained in this Plan shall require any Disbursing Agent to attempt to locate any Holder of an Allowed Claim.

6.11 Objections to Claims. Except as provided in this Plan, any objection to the allowance of a Claim must be Filed within sixty (60) days after the Effective Date (or, within sixty (60) days after the Filing of such Claim, whichever is later). The Bankruptcy Court may extend such deadline upon motion for good cause shown. Any objection not filed by such deadline shall be deemed waived, and the Claim shall be an Allowed Claim in the amount set forth on the proof of claim Filed by the Holder of such Claim.

Notwithstanding anything to the contrary in the Plan, and subject to Section 6.12 of this Plan, the Plan Administrator shall maintain Cash in an amount equal to the face amount of the Disputed Claims, plus interest thereon, if applicable, as set forth in Section 3.2(c) of this Plan, in a reserve account until the Disputed Claims become Allowed or Disallowed in full or in part, either by (i) agreement between counsel to the Debtor or the Plan Administrator and the Holder of the Disputed Claim or (ii) by Final Order. Notwithstanding the foregoing, with respect to a Claim for indemnity by the Debtor's current or former directors or officers, the Plan Administrator shall maintain Cash in a reserve account on account of such Claims only in an amount equal to the aggregate deductible payment(s) for the Debtor's applicable insurance policies.

6.12 No Distributions Pending Allowance. Notwithstanding any other provision in this Plan, no payments or Distributions shall be made with respect to all or any portion of a Disputed Claim unless and until all objections to such Disputed Claim have been settled or withdrawn or have been determined by Final Order and the Disputed Claim, or some portion thereof, has become an Allowed Claim.

6.13 Contingent and Unliquidated Claims. As soon as is practicable, the Plan Administrator shall take action seeking the estimation for purposes of distribution of contingent or unliquidated Claims filed against the Debtor, the Post-Effective Date Debtor, or the Estate pursuant to Section 502(c) of the Bankruptcy Code. Upon determination of the estimated amount of such contingent or unliquidated claim, the Plan Administrator shall maintain Cash in an amount equal to the amount of such estimated claim in a reserve account until such claims are resolved in full or in part, either by (i) agreement between counsel to the Debtor or the Plan Administrator and the Holder of the Claim or (ii) by Final Order. Notwithstanding the foregoing, with respect to a Claim for indemnity by the Debtor's current or former directors or officers, the Plan Administrator shall maintain Cash in a reserve account on account of such Claims only in an amount equal to the aggregate deductible payment(s) for the Debtor's applicable insurance policies.

ARTICLE VII

TREATMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

7.1 Rejection of Remaining Executory Contracts. All executory contracts and unexpired leases of the Debtor which are not assumed and assigned, or rejected, prior to the Confirmation Date shall be deemed rejected, effective as of the Confirmation Date.

7.2 Rejection Claims. Any party asserting a Claim for monetary damages as a result of the rejection of an executory contract or unexpired lease pursuant to Section 7.1 of this Plan shall submit a proof of claim substantially in the form of Official Form 10 with KCC, and serve it upon Debtor's counsel and the Plan Administrator within thirty (30) days following the Confirmation Date. If no rejection claim is filed by a party on account of the rejection of an executory contract or unexpired Lease pursuant to this Section 7.2 of the Plan, such Claim, if any, shall be forever disallowed and barred.

ARTICLE VIII

CONFIRMATION AND CONSUMMATION OF THE PLAN

8.1 Conditions to Confirmation. The following shall be the only condition to confirmation: the Confirmation Order is entered by the Bankruptcy Court and is in form and substance reasonably satisfactory to the Debtor.

8.2 Conditions to the Effective Date. The Effective Date shall not occur and the Plan shall not be consummated unless and until each of the following conditions has been satisfied or duly waived pursuant to Section 8.3 of the Plan: (i) the Bankruptcy Court shall have entered the Confirmation Order in form and substance reasonably satisfactory to the Debtor, (ii) the Plan

Administrator shall have been duly appointed and approved by the Bankruptcy Court, and entered into the Plan Administrator Agreement, (iii) all other actions, documents, and agreements reasonably determined by the Debtor to be necessary to implement the Plan shall have been effected or executed, and (iv) the Confirmation Order shall have become a Final Order.

8.3 Waiver of Conditions to the Effective Date. The conditions to the Effective Date set forth in Section 8.2 of the Plan may be waived in whole or part in writing by the Debtor at any time without further Order.

8.4 Effect of Nonoccurrence of Conditions to the Effective Date. If each of the conditions to the Effective Date is not satisfied or duly waived in accordance with Sections 8.2 and 8.3 of the Plan, then upon motion by the Debtor made before the time that each of such conditions has been satisfied or duly waived and upon notice to such parties in interest as the Bankruptcy Court may direct, the Confirmation Order may be vacated by the Bankruptcy Court; provided, however, that, notwithstanding the filing of such motion, the Confirmation Order may not be vacated if each of the conditions to the Effective Date is either satisfied or duly waived before the Bankruptcy Court enters an order granting such motion. If the Confirmation Order is vacated pursuant to this Section 8.4 of the Plan, (i) the Plan shall be null and void in all respects; and (ii) nothing contained in the Plan shall (a) constitute a waiver or release of any Claims by or against, or any Interest in, the Debtor or (b) prejudice in any manner the rights of the Debtor or any other party in interest.

ARTICLE IX

EFFECT OF PLAN CONFIRMATION

9.1 Binding Effect. Except as otherwise provided in Section 1141(d)(3) of the Bankruptcy Code and subject to the occurrence of the Effective Date, on and after the Confirmation Date, the provisions of this Plan shall bind any Holder of a Claim against, or Interest in, the Debtor and such Holder's respective successors and assigns, whether or not the Claim or Interest of such Holder is Impaired under this Plan and whether or not such Holder has accepted this Plan.

9.2 Exculpation. **From and after the Effective Date, the Released Parties shall neither have nor incur any liability to, or be subject to any right of action by, any Holder of a Claim or Interest, or any other party in interest, or any of their respective employees, representatives, financial advisors, attorneys, or agents acting in such capacity, or affiliates, or any of their successors or assigns, for any act or omission in connection with, relating to, or arising out of, the Bankruptcy Case, formulating, negotiating or implementing this Plan, the solicitation of acceptances of this Plan, the pursuit of approval of the Disclosure Statement and confirmation of this Plan, the confirmation of this Plan, the Plan Documents, the consummation of this Plan or the administration of this Plan or the property to be distributed under this Plan; provided, however, that the foregoing provision shall not apply to an act or omission that is determined by a Final Order of the Bankruptcy Court to have constituted willful misconduct or gross negligence. Any of the Released**

Parties shall be entitled to rely, in all respects, upon the advice of counsel with respect to their duties and responsibilities under the Plan.

9.3 Injunction Related to Exculpation. All Persons that have held, hold or may hold any claims exculpated pursuant to Section 9.2 will be permanently enjoined from taking any of the following actions against any Released Party or its property on account of such exculpated liabilities: (i) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind; (ii) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, directly or indirectly, any judgment, award, decree or order; (iii) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any lien; (iv) except as provided herein, asserting any setoff, right of subrogation or recoupment of any kind, directly or indirectly, against any obligation due a Released Party; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of this Plan.

9.4 Survival of Indemnification Obligations. Except as set forth in this Plan or in the Confirmation Order, the obligations of the Debtor to indemnify any past and present directors, officers, agents, employees and representatives, pursuant to certificates or articles of incorporation, by-laws, contracts and/or applicable statutes, in respect of all actions, suits and proceedings against any of such officers, directors, agents, employees, and representatives, shall not be discharged or Impaired by, and shall survive, confirmation or consummation of this Plan. To the extent not already obtained, the Debtor shall purchase and maintain a tail policy for the director and officer insurance providing coverage for directors and officers for a period of six (6) years after the Effective Date insuring such parties in respect of any claims, demands, suits, causes of action, or proceedings against such directors and officers based upon any act or omission related to such directors' and officers' service with, for, or on behalf of the Debtor in at least the amount and scope as currently maintained by the Debtor.

9.5 Releases by the Debtor. As of the Effective Date, the Debtor shall be deemed to have forever released, waived and discharged all claims, demands, debts, rights, causes of action or liabilities, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise against any of the Released Parties, that are based in whole or in part on any act or omission, transaction, event or other occurrence taking place on or prior to the Effective Date in any way relating to any of the Debtor, the Bankruptcy Case, this Plan or the Disclosure Statement; provided, that, nothing herein shall release any of such parties from their obligations under the Plan or the Plan Administrator Agreement or, if implemented, the Liquidating Trust Agreement, and provided further that nothing herein shall release any claim related to an act or omission that is determined by a Final Order to have constituted willful misconduct or gross negligence.

9.6 Discharge of Claims and Termination of Interests. Except as otherwise provided herein or in the Confirmation Order, all consideration distributed under this Plan shall be in exchange for, and in complete satisfaction, settlement, discharge and release of, all Claims and Interests of any nature whatsoever against the Debtor or its

Estate, assets, properties or interest in property, and regardless of whether any property shall have been distributed or retained pursuant to this Plan on account of such Claims and Interests. Upon the Effective Date, the Debtor shall be deemed discharged and released under Section 1141(d)(1)(A) of the Bankruptcy Code from any and all Claims and Interests, including, but not limited to, demands and liabilities that arose before the Effective Date, and all debts of the kind specified in Section 502(g), 502(h) or 502(i) of the Bankruptcy Code, and the Interests.

9.7 Injunction. Except as otherwise provided in this Plan or the Confirmation Order, from and after the Effective Date all Persons who have held, hold or may hold Claims against or Interests in the Debtor, are (i) permanently enjoined from taking any of the following actions against the Estate or its property, on account of any such Claims or Interests and (ii) permanently enjoined from taking any of the following actions against any of the Debtor, the Post-Effective Date Debtor, Liquidating Trust, the Plan Administrator or their property on account of such Claims or Interests: (A) commencing or continuing, in any manner or in any place, any action, or other proceeding; (B) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (C) creating, perfecting or enforcing any lien or encumbrance; (D) asserting any right of setoff, subrogation or recoupment of any kind and (E) commencing or continuing, in any manner or in any place, any action that does not comply with or is inconsistent with the provisions of this Plan; provided, however, that nothing contained herein shall preclude such persons from exercising their rights pursuant to and consistent with the terms of this Plan.

9.8 Term of Bankruptcy Injunction or Stays. All injunctions or stays provided for in the Bankruptcy Case under Section 105 or 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date, shall remain in full force and effect until the Effective Date.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Retention of Jurisdiction. Following the Confirmation Date and the Effective Date, the Bankruptcy Court shall retain exclusive jurisdiction over the Bankruptcy Case and the provisions of this Plan and the Confirmation Order, to the fullest extent permitted by law, including, among other things, jurisdiction to:

- (a) hear and determine motions, applications, adversary proceedings, and contested matters pending before or commenced after the Effective Date;
- (b) hear and determine objections (whether filed before or after the Effective Date) to, or requests for estimation of any Claim, and to enter any order requiring the filing of Proof of any Claim before a particular date;
- (c) estimate any Claim at any time, including, without limitation, during litigation concerning any objection to such Claim, including any pending appeal;

- (d) ensure that Distributions to holders of Allowed Claims and Interests are accomplished as provided in this Plan;
- (e) enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, or vacated;
- (f) issue or construe such orders or take any action as may be necessary for the implementation, execution, enforcement and consummation of this Plan and the Confirmation Order, and hear and determine disputes arising in connection with the foregoing;
- (g) hear and determine any applications to modify this Plan, to cure any defect or omission or to reconcile any inconsistency in this Plan, the Disclosure Statement or in any order of the Bankruptcy Court including, without limitation, the Confirmation Order;
- (h) hear and determine all applications for Professional Fees;
- (i) hear and determine other issues presented or arising under this Plan, including disputes among holders of Claims and arising under agreements, and the documents or instruments executed in connection with this Plan;
- (j) hear and determine any action concerning the recovery and liquidation of Estate Assets, wherever located, including without limitation, litigation to liquidate and recover Estate Assets that consist of, among other things, the Causes of Action, or other actions seeking relief of any sort with respect to issues relating to or affecting Estate Assets;
- (k) hear and determine any action concerning the determination of taxes, tax refunds, tax attributes, and tax benefits and similar or related matters with respect to the Debtor or the Estate including, without limitation, matters concerning federal, state and local taxes in accordance with sections 346, 505 and 1146 of the Bankruptcy Code;
- (l) hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code; and
- (m) enter the Final Decree.

10.2 Governing Law. Except as mandated by the Bankruptcy Code, the Bankruptcy Rules or the Local Rules, as applicable, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with the laws of the State of Delaware.

10.3 Headings. The headings of articles, paragraphs, and subparagraphs of the Plan are inserted for convenience only and shall not affect the interpretation of any provision of the Plan.

10.4 Time. Whenever the time for the occurrence or happening of an event as set forth in this Plan falls on a day that is not a Business Day, then the time for the next occurrence or happening of said event shall be extended to the next day which is a Business Day.

10.5 Severability. Should any provision of the Plan be determined to be unenforceable after the Effective Date such determination shall in no way limit or affect the enforceability and operative effect of any and all of the other provisions of the Plan.

10.6 Modification. The Debtor may alter, amend or modify this Plan under Section 1127 of the Bankruptcy Code or as otherwise permitted by applicable law at any time prior to the Confirmation Date. After the Confirmation Date and prior to the substantial consummation of this Plan, any party in interest in the Bankruptcy Case may, so long as the treatment of holders of Claims or Interests under this Plan are not materially adversely affected, institute proceedings in the Bankruptcy Court to remedy any defect or omission or to reconcile any inconsistencies in this Plan, the Disclosure Statement or the Confirmation Order, and any other matters as may be necessary to carry out the purposes and intents of this Plan; provided, however, prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

10.7 Revocation. The Debtor reserves the right to revoke and withdraw this Plan prior to the entry of the Confirmation Order. If the Debtor revokes or withdraws the Plan, the Plan shall be deemed null and void and nothing contained herein shall be deemed to constitute a waiver or release of any claims by or against the Debtor, any other Person, or to prejudice in any manner the rights of such parties in any further proceedings involving the Debtor.

10.8 Plan Controls. In the event and to the extent that any provision of the Plan is inconsistent with the provisions of the Disclosure Statement, or any other agreement to be executed by any Person pursuant to the Plan, the provisions of the Plan shall control and take precedence. In the event of any inconsistency between any provision of any of the foregoing documents, and any provision of the Confirmation Order, the Confirmation Order shall control and take precedence.

10.9 Statutory Fees. The Debtor, or the Plan Administrator on behalf of the Debtor, shall pay all fees payable pursuant to 28 U.S.C. § 1930.

10.10 Dissolution of the Creditors' Committee and Equity Committee. On the Effective Date, the Creditors' Committee and the Equity Committee shall be dissolved and their members shall be deemed released of any continuing duties, responsibilities and obligations in connection with this Bankruptcy Case or the Plan and its implementation, and the retention and employment of the Creditors' Committee's and Equity Committee's attorneys, accountants and other agents shall terminate, except with respect to: (i) the Final Fee Hearing; or (ii) any appeals of the Confirmation Order through the date such appeals are finally decided, settled, withdrawn or otherwise resolved.

10.11 Claims Agent. KCC, in its capacity as claims, noticing and balloting agent shall be relieved of such duties on the date of the entry of the Final Decree or upon written notice by the Debtor.

10.12 Dissolution of Post-Effective Date Debtor. As soon as practicable after the Plan Administrator liquidates or otherwise disposes of the Estate Assets and makes the Final Distribution, the Plan Administrator shall, at the expense of the Estate: (i) provide for the retention of books and records delivered to or created by the Plan Administrator until the time that such books and records are no longer required to be retained under applicable law, and file a certificate with the Bankruptcy Court stating the location at which such books and records are being stored; (ii) file a certificate with the Bankruptcy Court stating that the Plan Administrator has liquidated or otherwise disposed of the Estate Assets and made a Final Distribution under this Plan; (iii) file any necessary paperwork with the Office of the Secretary of State for the State of Delaware to effectuate the dissolution of the Post-Effective Date Debtor in accordance with applicable law; and (iv) resign as the sole officer and director of the Post-Effective Date Debtor.

10.13 Effectuating Documents. The officer(s) and director(s) of the Debtor shall be authorized to execute, deliver, file or record such contracts, instruments, releases and other agreements or documents and take such other actions as may be necessary or appropriate to effectuate and implement the provisions of the Plan.

10.14 Operating Reports and U.S. Trustee Fees. Post-confirmation, the Plan Administrator shall continue to file such operating reports as are required by the Bankruptcy Code, the Bankruptcy Rules and the Local Rules, and shall continue paying such U.S. Trustee fees as are owed, until such time as the Bankruptcy Case is closed.

10.15 No Effect on the MEIP. Nothing in this Plan or the Confirmation Order shall affect, or be deemed to affect, the terms of the MEIP, and the Post-Effective Date Debtor or the Liquidating Trust, as the case may be, shall be deemed to have explicitly assumed the Debtor's obligations under the MEIP.

10.16 Final Decree. Subsequent to the Final Distribution, the Plan Administrator shall cause to be Filed a certification of counsel requesting the entry of the Final Decree.

10.17 Post-Confirmation Notice. Pursuant to Bankruptcy Rule 2002 and any applicable Local Rule, notice of all post-Confirmation matters for which notice is required to be given shall be deemed sufficient if served upon counsel for the U.S. Trustee's office, counsel to the Debtor, counsel for the Plan Administrator, and all persons on the Bankruptcy Rule 2002 service list. With the exception of the Debtor and the U.S. Trustee, any Person desiring to remain on the Debtor's Bankruptcy Rule 2002 service list shall be required to file a request for continued service and to serve such request upon counsel to the Plan Administrator within thirty (30) days subsequent to the Effective Date. Persons shall be notified of such continued notice requirements in the notice of entry of the Confirmation Order. Persons who do not file a request for continued service shall be removed from the Debtor's Bankruptcy Rule 2002 service list.

10.18 Section 1146 Exemption. Pursuant to Section 1146 of the Bankruptcy Code, the issuance, transfer or exchange of any security, or the execution, delivery or recording of an instrument of transfer on or after the Confirmation Date shall be deemed to be made pursuant to and under this Plan, including, without limitation, any such acts by the Debtor, if on the Effective Date, and the Plan Administrator, if after the Effective Date, and shall not be taxed under any law imposing a stamp tax, transfer tax or similar tax or fee. Consistent with the foregoing, each

recorder of deeds or similar official for any county, city or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order and the Plan, be ordered and directed to accept such instrument, without requiring the payment of any documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax or similar tax.

ARTICLE XI

FINAL FEE HEARING

11.1 The Professional Fee Claim Bar Date. Any and all applications for the final allowance of Professional Fee Claims shall be Filed and served upon counsel to the Debtor, counsel to the Creditors' Committee, counsel to the Equity Committee, the United States Trustee, and all parties entitled to notice pursuant to Bankruptcy Rule 2002 within forty-five (45) days of the Effective Date.

11.2 Final Fee Hearing. A hearing on final allowance of Professional Fee Claims shall be held as soon as practicable after the Professional Fee Claim Bar Date. The Debtor's counsel shall File a notice of the Final Fee Hearing. Such notice shall be served upon counsel for the Creditors' Committee, counsel to the Equity Committee, all Professionals, the United States Trustee and all parties entitled to notice pursuant to Bankruptcy Rule 2002.

ARTICLE XII

REQUEST FOR CONFIRMATION

12.1 Request for Confirmation. The Debtor requests confirmation of this Plan in accordance with Section 1129(a) and/or Section 1129(b) of the Bankruptcy Code.

MIDDLEBROOK PHARMACEUTICALS, INC.

By: 

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